Supreme Court of the United States

OCTOBER TERM, 1945

No. 342

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL No. 1083, UNITED POTTERY WORKERS OF AMERICA, Affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

Petitioners,

vs.

MT. CLEMENS POTTERY COMPANY,

Respondent.

TRANSCRIPT OF RECORD

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

(VOL. I—Index and Pages 1 to 528, Inclusive)

EDWARD LAMB,
LOWELL GOERLICH,
1014 Edison Bldg.,
Toledo, Ohio,
Attorneys for Petitioners.

FRANK E. COOPER,
BEAUMONT, SMITH & HARRIS,
Ford Building,
Detroit, Michigan,
BERT V. NUNNELEY,
Mt. Clemens, Mich.,
Attorneys for Respondent.

No. .....

United States of America

IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

MT. CLEMENS POTTERY COMPANY,

Appellant,

vs.

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL 1083, UNITED POTTERY WORKERS OF AMERICA, Affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

Appellees

Appeal From the District Court of the United States for the Eastern District of Michigan, Southern Division.
Civil Action No. 2582

TRANSCRIPT OF RECORD

(VOL. I—Index and Pages 1 to 528, Inclusive)

FRANK E. COOPER,
11th Floor, Ford Building,
Detroit 26, Michigan;

BERT V. NUNNELEY,
Mt. Clemens Savings Bank Building,
Mt. Clemens, Michigan;

BEAUMONT, SMITH & HARRIS,
Of Counsel,
Attorneys for Appellant.

EDWARD LAMB,
LOWELL GOERLICH,
1014 Edison Building,
Toledo, Ohio,
Attorneys for Appellees.

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TRANSCRIPT OF RECORD

CALENDAR ENTRIES

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Apr. 16—Complaint filed.
Apr. 16—Summons issued.
Apr. 24—Summons with return filed.
May 2—Defendant S. S. Kresge Co., Special Appearance Motion to Quash and Dismiss, Objections to Interrogatories filed. Hearing May 12, 1941.
May 2—Objections of Mt. Clemens Pottery Co. to Interrogatories filed. Hearing May 12, 1941.
May 3—Affidavit of Service filed.
May 8—Application for continuance of hearing on Objections and Motion filed.
May 12—Motions of The Mt. Clemens Pottery Co. to limit scope of action and to strike certain allegations and to require furnishing of Bill of Particulars and more definite statement of claim filed. Hearing May 26, 1941.
May 12—Motion to Quash and Dismiss and Objections to Interrogatories continued to May 26, 1941.
May 13—Affidavit of Service filed.
May 17—Affidavit of Carl B. Tuttle and Notice filed.
May 26—Motion to Quash and Dismiss; and Objections to Interrogatories taken under advisement with leave to file briefs.
June 11—Notice of Settlement of Order with respect to Motion to Quash and Objections to Inter-

rogatories of S. S. Kresge Co. filed. Hearing June 16, 1941.

June 13—Order denying Motions to Quash and Dismiss filed and entered—Book 39, page 549.

June 16—Notice of Settlement re Order to Quash, etc., dismissed.

June 19—Affidavit of Service filed.

July 8—Designation of Albert Weier, et al., filed.

July 8—Designation of Harry May, et al., filed.

July 8—Designation of Walter Selk, et al., filed.

July 8—Designation of Arthur Baxter, et al., filed.

July 8—Designation of Ruth Gottschalk, et al., filed.

July 8—Designation of Arthur Sibbe, et al., filed.

Aug. 28—Answer of Defendant S. S. Kresge filed.

Sept. 29—Designation of H. Wilson, et al., filed.

Oct. 23—Bill of Particulars filed.

Nov. 1—Motion to strike or for further particulars filed. Hearing Nov. 10, 1941.

Nov. 10—Order on Motion of Defendant to strike or for further particulars filed and entered.

Nov. 24—Order Extending Time to File Amendment to the Bill of Particulars to Dec. 15, 1941, filed and entered.

Nov. 26—Amendment to Plaintiff's Bill of Particulars filed.

Dec. 2—Motion for Judgment and for Appointment of Special Master filed. Hearing Dec. 8, 1941.

Dec. 6—Motion of Mt. Clemens Pottery Co. to strike or for further particulars filed. Hearing Dec. 15, 1941.

Dec. 8—Hearing on Motion for Judgment and for Appointment of Special Master continued to Dec. 15, 1941.

Dec. 12—Answer of Mt. Clemens Pottery Co. to Motion for Judgment and for Appointment of Special Master filed.

Dec. 15—Order Denying Motion for Judgment filed and entered.

1942—

Jan. 3—Answer of Mt. Clemens Pottery Co. and Motions to Dismiss and Strike filed.

Jan. 5—Order Denying Plaintiffs' Request for Judgment Without Prejudice, etc., filed and entered.

Jan. 6—Supplemental Order Denying Plaintiffs' Request for Judgment Without Prejudice, etc., filed and entered.

Jan. 7—Affidavit of Service filed.

Jan. 10—Exceptions of Mt. Clemens Pottery Co. to Supplemental Order of Jan. 6, 1942; filed.

Jan. 16—Motion of Plaintiffs for Summary Judgment filed. Hearing Jan. 26, 1942.

Jan. 24—Answer of Mt. Clemens Pottery Co. to Motion for Summary Judgment filed.

Jan. 27—Order Denying Motion for Summary Judgment filed and entered.

Jan. 28—Order Denying Motor for Summary Judgment and Referring Cause to Donald L. Quaife as Special Master filed and entered.

Jan. 29—Supplemental Order Denying Motion for Summary Judgment, etc., filed and entered.

Jan. 30—Designation of Irene Neoker, et al., filed.

Feb. 10—Designation of Bill Behnke, et al., filed.

June 5—Petition for Compensation filed.

June 5—Order for Compensation filed and entered.

1943—

Mar. 23—Report of Special Master filed.

Mar. 24—Notice of Filing Report of Master and Proof of Mailing filed.

Mar. 25—Motion of S. S. Kresge Co. for Order Adopting Report of Special Master and for Entry of Judgment filed. Hearing Apr. 5, 1943.

Apr. 1—Petition of Donald L. Quaife for Compensation filed. Hearing Apr. 5, 1943.

Apr. 2—Objections to Master's Report filed.

Apr. 3—Motion of Mt. Clemens Pottery Co. for entry of Judgment on Report of Special Master filed. Hearing Apr. 12, 1943.

Apr. 6—Petition of Donald L. Quaife for Compensation and Motion of S. S. Kresge Co. for Order Adopting Report of Special Master continued to April 12, 1943.

Apr. 12—Motion of S. S. Kresge Co. for Order Adopting Report of Special Master and Motion of Mt. Clemens Pottery Co. for entry of Judgment on Report of Special Master taken under advisement.

Apr. 12—Order allowing Donald Quaife, Special Master, $1000.00 as Temporary Allowance on $2000.00 fee entered.

Apr. 14—Order allowing Compensation on Account to Special Master filed and entered.

Apr. 24—Reply Memorandum of Plaintiffs relative to Answer of Mt. Clemens Pottery Co. to Plaintiffs' Objections filed.

June 8—Further hearing before the Court. Arguments of Counsel. Case taken under advisement.

June 15—Order Dismissing Cause as to S. S. Kresge Co. With Prejudice filed and entered.

June 15—Order Allowing Compensation to Special Master filed and entered.

July 2—Opinion of the Court filed and entered.

July 7—Proposed Findings of Fact and Conclusions of Law filed. Motion for Supplemental and Additional Findings filed.

July 8—Petition of Edward Lamb for Allowance of Counsel Fees filed.

Aug. 25—Motion of Plaintiffs to Settle Findings of Fact, Conclusions of Law and for Judgment filed.

Sept. 2—Notice of Hearing on Motion Sept. 13, 1943, filed.

Sept. 3—Motion of Defendant Requesting Adoption of Findings and Conclusions filed. Hearing Sept. 13, 1943.

Sept. 3—Notice of Settlement of Findings of Fact and Conclusions of Law filed. Hearing Sept. 13, 1943.

Sept. 13—Findings of Fact and Conclusions of Law filed and entered.

Sept. 22—Preliminary Statement of Exceptions by Defendant to Findings of Fact, etc., filed.

Dec. 11—Computations made in accordance with Court's Findings of Sept. 13 filed.

Dec. 11—Praecipe for hearing on Motion for Adoption of Findings, Dec. 20, 1943, 2 p. m., filed.

1944—

Jan. 4—Defendant's Motion for Adoption of Findings taken under advisement with leave to file briefs.

Mar. 3—Opinion of the Court filed and entered.

May 24—Motion to Amend Findings of Fact and Conclusions of Law and for an Entry of Judgment filed.

May 24—Notice of Hearing on Motion for June 5, 1944, filed.

June 12—Objections to Allowance of Attorney Fees filed.

June 13—Judgment for Plaintiffs in $2,415.74, Attorney Fees $2,000.00 and Costs to be Taxed filed and entered.

July 14—Motion for Extension of Stay filed.

July 14—Order Extending Stay of Proceedings to and including September 2, 1944, filed and entered.

Aug. 29—Objections to Petition for Order Dispensing with Reproduction of Physical Exhibits in Printed Record filed.

Aug. 29—Petition for Fixing of Bond and Providing for Stay filed.

Aug. 29—Order Fixing Amount of Supersedeas and Appeal Bond in $10,000, and Providing for Stay on Giving of Bond filed and entered.

Sept. 7—Petition for Order Dispensing with Reproduction of Physical Exhibits filed.

Sept. 7—Order Dispensing with Reproduction of Physical Exhibits filed and entered.

Sept. 8—Notice of Appeal filed.

Sept. 8—Supersedeas and Appeal Bond in $10,000 filed. Fidelity and Deposit Company of Mt. Clemens, surety.

Sept. 8—Concise Statement of Points of Defendant filed.

Sept. 8—Designation of Record on Appeal by Defendant filed.

Sept. 8—30 Volumes of testimony filed (2 sets: one filed and other lodged).

Sept. 8—Letter of Defendant's Attorneys re Exhibits filed.

Sept. 8—Receipt for Lodged Testimony filed.

Sept. 8—Receipt for Exhibits filed.

Sept. 9—Proof of Mailing of Notice of Appeal filed.

Sept. 12—Affidavit of Service filed.

Oct. 9—Petition for Order Extending Time filed.

Oct. 9—Order Extending Time for Filing Record on Appeal to and Including Dec. 7, 1944 filed and entered.

Oct. 30—Stipulation as to Transcript and Exhibits filed.

COMPLAINT

(Filed April 16, 1941)

Now come the plaintiffs herein for and in behalf of themselves and others similarly situated, and state that each is an employee of the Mt. Clemens Pottery Company, defendant herein; that the Mt. Clemens Pottery Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan with its principal place of business at Mt. Clemens, Michigan, in the Eastern District of Michigan, Southern Division. That Charles B. Doll is the general superintendent and managing agent of said Mt. Clemens Pottery Company. That the defendant S. S. Kresge Company is a corporation organized and existing under the laws of the State of Michigan and claims a substantial ownership of the stock of the defendant Mt. Clemens Pottery Company and as such owner acts as an employer and supervises the policies and affairs of said defendant Mt. Clemens Pottery Company.

1. Plaintiffs further state that each is an employee of the Mt. Clemens Pottery Company and that they bring this action by virtue of Section 16(b) of the Fair Labor Standards Act of 1938, hereinafter referred to as the Act. Said action is brought in behalf of the plaintiffs herein for and in behalf of all others similarly situated, employees of the Mt. Clemens Pottery Company, defendants herein. The United Pottery Workers of America is an unincorporated trade association affiliated with the Congress of Industrial Organizations and that Local 1083 thereof has a majority of its members among the employees of the Mt. Clemens Pottery Company. That said trade union, plaintiff herein, has been designated a representative of various of its members to bring this action under the Fair Labor Standards Act of 1938, together with these individual plaintiffs.

Plaintiffs further allege that this action arises under an Act of Congress entitled "Fair Labor Standards Act of 1938," 29 U.S.C.A. 201, and that jurisdiction is conferred upon this Court by Section 41(8), 28 U.S.C.A. 24, giving the District Court original jurisdiction "of all suits and proceedings arising under any law regulating commerce" and by Section 16(b) of the Fair Labor Standards Act aforesaid.

2. Plaintiffs further state that since on or about October 24, 1938, the effective date of the aforesaid Fair Labor Standards Act of 1938, the defendant company has been violating the provisions of said Act, including Section 7(a) of said Act.

3. Plaintiffs further allege that the aforesaid Mt. Clemens Pottery Company employs approximately 1250 employees. Plaintiffs state that said employees are engaged in interstate commerce and are covered by the provision of said Act. Plaintiffs further state that almost all of the raw materials used by said corporation are purchased in North Carolina, Georgia and other states outside the state of Michigan, that lead silicate, frit and other ingredients used by defendant in the manufacture of its products are purchased in Missouri and elsewhere and that approximately 85% of the finished products of said corporation are sold in interstate commerce outside the state of Michigan.

4. Plaintiffs further state that after October 24, 1938, said defendant company worked its employees in violation of said Act for a period of 45 hours a week without paying said employees overtime as provided for in the aforesaid statute. That there is now due and owing said employees for the period from October 24, 1938, to October 24, 1939, pay for the hours worked overtime in excess of said statutory limitations as well as liquidated damages in an amount equal thereto, all as more fully set forth in Section 16(b) of said Act. Plaintiffs further state that

after October 24, 1939, the maximum number of working hours of employees, such as the plaintiffs herein, was reduced by said Act to 42 hours and that the defendant company in violation of said Act has been working its employees 45 hours a week since October 24, 1939, and that there is due and owing said employees pay for hours worked overtime in excess of said statutory limitations as well as liquidated damages in an equal amount, all as set forth in Section 16(b) of said Act.

5. Plaintiffs further state that after October 24, 1940, the maximum number of working hours of employees, such as the plaintiffs herein, was reduced by said Act to 40 hours and that the defendant company in violation of said Act has been working its employees approximately 45 hours a week since October 24, 1940, and that there is due and owing said employees pay for hours worked overtime in excess of said statutory limitations as well as liquidated damages in an equal amount, all as set forth in Section 16(b) of said Act.

6. Plaintiffs further state that employees represented in this action are employees who work either on a piece work, bonus or upon an hourly rate basis. Plaintiffs further state that since October 24, 1939, certain of defendant's employees in whose behalf this action is brought by plaintiffs herein did not, either on a piece work or upon an hourly rate computation, earn the minimum wage of 30¢ an hour as provided for in Section 16(b) of said Act. That female employees in the decorating department of said defendant company were required to and did do decal work at home under orders of the defendant herein and without compensation therefor. That said defendant required employees, including one Marie Pearl, to take such decal work home with her for services in defendant's behalf. That said company paid said Marie Pearl the sum of $21.00 for two weeks' work and that said company stated on the company records, submitted to the United States Government, that said Marie Pearl worked a period of 80 hours during said period of two weeks, whereas in

truth and in fact during said two weeks period said Marie Pearl worked for defendant at home and in excess of said 80 hours.

Plaintiffs allege that other employees of the defendant in whose behalf this action is brought undertake work for said defendant company for a period of 18 weeks and for the minimum pay of 30¢ an hour required by said Act and that in truth and in fact said company deducts the sum of 10% of said new employee's pay during a period of 18 weeks from the date of hiring of said employees. That said deduction is described by said defendant as a "beginner's rate" of pay, whereas in truth and in fact said company upon the completion of said 18 weeks employment, changes said employees to another job in order to continue the deduction of 10% from the pay checks of the employees as aforesaid. That there is now due and owing said employees amounts for time worked in which they were not paid the minimum wage as aforesaid.

7. Plaintiffs further state that the defendant compels its employees to punch a time clock and in such procedure deliberately falsifies the records of the time worked by its employees. That the said employees work 14 minutes in advance of the time shown on the time clocks in the morning of each working day. That the time clocks maintained by the defendant company indicate that the employees stop working for a lunch period at 11:45 A. M., whereas in truth and in fact each employee of the defendant herein is required to continue working until 11:55 A. M. That thereafter the time clock indicates that each employee of the defendant company herein resumes work at 12:45 P. M., whereas in truth and in fact each employee of the defendant company herein resumes work at 12:31 P. M. That the time clocks maintained by the defendant company indicate that the employees stop work in the afternoon at 4:15 P. M., whereas in truth and in fact each employee of defendant works until 4:30 P. M. That ever since October 24, 1940, said defendant company has required each of the employees in whose behalf this action

is brought by the plaintiffs herein to work an extra 40 minutes per day or approximately 3¼ hours per week in addition to the 40 hours shown on the time clocks erroneously maintained as aforesaid.

8. That on or about September 15, 1940, and on other occasions the foreman of the defendant company, Ernest Harms, acting for and in behalf of the defendants herein, falsified the records of 40 female employees of the defendant company by punching out the time cards of said female employees 61 minutes early in order to indicate that said employees ceased working at 4:39 P. M., whereas in truth and fact said employees were required to work until 5:40 P. M. That said company further falsifies said records by requiring said plaintiffs to sign a voucher in blank prior to the issuance of checks in payment for said employees' services; that said vouchers are thereafter filled in by the company to indicate alleged hours worked and wages paid after the checks for service are given said employees. That said employees have not been compensated for the work performed in excess of the hours shown on the time cards, vouchers and payroll slips and that wages for said work performed, including liquidated damages as provided for in said Act, are due and owing said employees.

That the employees in whose behalf this action is brought by the plaintiffs herein are engaged in the clay shops, on the bisque and glost belts, in the dipping department, decorating room, packing sheds and the slip off departments of the defendant herein and includes kiln operators, liners, decal and other workers as well as employees who load, unload, pack, handle, ship and transport and process the products of the defendant herein for interstate commerce.

9. Plaintiffs further allege that they are not informed as to the exact amount of hours overtime rendered by each of said employees or the minimum wages still due and owing for hours worked in violation of the aforesaid Fair Labor Standards Act of 1938. Plaintiffs further

allege that such information is not available to these plaintiffs, but that the records thereof are, or should be, under the provisions of said Act, in the exclusive possession of the defendants herein. That interrogatories are attached hereto which plaintiffs respectfully ask the Court to compel defendant to answer. That plaintiffs are informed and so allege the fact to be that there is in excess of $100,000.00 due and owing to the employees of the defendant aforesaid for overtime rendered by said employees in the employ of the defendant herein in violation of the Fair Labor Standards Act of 1938 and for wages not paid in accordance with the minimum standards of wages set up in the Fair Labor Standards Act of 1938, all in violation of the express terms of said Act.

Plaintiffs further state that by reason of the aforesaid acts of the defendant, plaintiffs for themselves and for others similarly situated and as employees of the Mt. Clemens Pottery Company, have suffered damages in the amount of $100,000.00.

Wherefore, plaintiffs pray for themselves and for other employees similarly situated in whose behalf this action is brought as follows:

1. That the defendant answer the interrogatories hereto annexed.

2. That the Court enter judgment in the amount of $100,000.00 and costs, including reasonable attorney fees for plaintiff's counsel, and that they may have such other and further relief as is just and proper in the premises.

Edward Lamb,
Lowell Goerlich,
Counsel for Plaintiffs,

1014 Edison Building,
Toledo, Ohio.

INTERROGATORIES ANNEXED

The following interrogatories are annexed to the foregoing complaint to be answered by the defendant as prayed for in the complaint:

First Interrogatory:

Give the names, addresses and social security numbers of all employees in the employment of the defendants herein between the dates of October 24, 1938, and the date of the filing of the complaint herein and who are similarly situated to the plaintiffs herein.

Answer:

Second Interrogatory:

Give the hours worked by the above employees and the wages paid to them by the defendant between the dates of October 24, 1938, and the filing of the petition herein.

Answer:

Third Interrogatory:

Give all correspondence, office records and other memoranda passing between defendants or their agents concerning setting up or maintaining records required by the Fair Labor Standards Act of 1938.

Answer:

Fourth Interrogatory:

Give all notices posted, letters addressed to employees and other memoranda passing between the defendant and its agents concerning enactment of the Fair Labor Standards Act of 1938 and practices thereunder and in relation to the wages to be paid defendant's employees after Oc-

tober 24, 1938, together with a list of the wages paid each of the said defendant's employees for the period one year prior to October 24, 1938, and for the period from October 24, 1938, to the date of the filing of this petition.

Answer:

OBJECTIONS TO INTERROGATORIES

(Filed May 2, 1941)

Now comes The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by Beaumont, Smith & Harris, its attorneys, appearing specially only and solely for the purpose of filing objections to the interrogatories heretofore delivered to said defendant, and shows unto the Court as follows:

1. On or about April 22, 1941, there was served upon said defendant a copy of the complaint filed in the above entitled cause and of annexed interrogatories.

2. The said defendant is desirous of preparing and filing within the time allowed by the rules of this Court certain motions attacking the complaint heretofore served and filed herein; and the disposition of such motions may, if the same be granted, render unnecessary any further consideration of the interrogatories hereinabove referred to.

3. The said defendant further objects to said interrogatories numbered First through Fourth and to each and all of them, and moves that they be quashed and dismissed on the following grounds:

(a) Said interrogatories are not directed to the discovery of relevant or ultimate facts;

(b) Said interrogatories are not directed to the discovery of facts material to the support of the cause;

(c) Said interrogatories seek only to compel a blanket disclosure of evidence or facts from which plaintiffs hope to be able to discover some cause of action;

(d) Said interrogatories are merely fishing expeditions designed to pry into the defendant's records;

(e) Said interrogatories are too broad and inquisitorial in their nature and scope;

(f) Said interrogatories seek disclosure of confidential and privileged information;

(g) There is no showing, nor does it in any way appear, that the information requested by plaintiffs is in any way relevant or material to the allegations of the complaint;

(h) There is no showing that plaintiffs, or any of them, have any authority to sue for any other employees of this defendant; and if they have not, they are not entitled to the information requested as to such other employees; and as to the named plaintiffs, or any others whom plaintiffs may be authorized to represent, there is no occasion to require disclosure of the data requested in interrogatories First and Second, such data as to all such parties being within the knowledge of such parties;

(i) All the interrogatories are too broad and indefinite, and too vague and uncertain; and are improper as requiring defendants to compile elaborate data;

(j) Interrogatories relating to the contents of communications are improper;

(k) All of said interrogatories are improper as requiring production of books, documents and other tangible

things, the production of which should be and could more conveniently be sought under other rules;

(l) Said so-called interrogatories are not really interrogatories but are requests for the inspection of certain documents. If discovery thereof is sought by plaintiffs it should be sought by the method provided by other rules and subject to conditions imposed by such other rules;

(m) The said interrogatories are not made in good faith, but are designed to vex and annoy the defendant by seeking a compilation of all the data contained in payroll records of this defendant over a period of several years, relating to many matters in no way pertinent to the pending suit;

(n) The plaintiffs are not entitled to any of the information sought to be elicited from this defendant by said interrogatories;

(o) The said interrogatories do not indicate to which of the two defendants they are addressed.

Wherefore, your defendant moves that said interrogatories be stricken and that consideration of defendant's objections to said interrogatories be deferred until the disposition of motions by this defendant attacking the said complaint.

Beaumont, Smith & Harris,
F. E. Cooper,
Attorneys for Defendant,
The Mt. Clemens Pottery Company
2900 Union Guardian Building,
Detroit, Michigan.

May 2, 1941.

MOTIONS OF DEFENDANT THE MT. CLEMENS POTTERY COMPANY TO LIMIT SCOPE OF ACTION AND TO STRIKE CERTAIN ALLEGATIONS AND TO REQUIRE FURNISHING OF BILL OF PARTICULARS AND MORE DEFINITE STATEMENT OF CLAIM

(Filed May 12, 1941)

Now comes The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by Beaumont, Smith & Harris, its attorneys, and moves the Court to enter an appropriate order or orders:

(a) limiting the scope of the action by dismissing the above entitled complaint insofar as it purports to allege, or to be the basis of, a class or representative action, or an action brought by an agent for or on behalf of divers unnamed individuals as the real parties in interest, and

(b) striking from said complaint the various immaterial, impertinent, and improperly pleaded allegations hereinafter more specifically referred to, and

(c) requiring the furnishing by plaintiffs of a more definite statement and a bill of particulars of certain matters (hereinafter more specifically referred to) which are not averred in said complaint with sufficient definiteness or particularity to enable this defendant properly to prepare its responsive pleadings or to prepare for trial, and

(d) granting such other relief as to the Court may seem proper.

I. More particularly, this defendant moves the Court that the complaint be dismissed insofar as it purports to present a class or representative action, and that the scope of the action be limited to the claims of the named individual plaintiffs, and of such other individuals as may properly intervene, for the following reasons, among others:

(a) The above entitled cause is not the type of case wherein Section 16(b) of the Federal Fair Labor Standards Act of 1938 or the rules of this Court permit the joining of separate and individual and independent claims of several parties, it appearing on the face of the complaint that there are not common questions of law and fact involved nor is common relief sought, nor is the character of the right alleged several.

(b) There is no proper showing as to what employees or what class of employees are represented, nor is there any proper showing that there exists any class or group of employees who are similarly situated, nor is there any showing that the named plaintiffs can provide proper or adequate representation of any such class.

(c) There is no showing as to the authority by which the named individual plaintiffs or Local 1083 of the United Pottery Workers of America represent any other employees of this defendant, nor is there any showing as to what other employees the plaintiffs purport to represent.

(d) Said Local 1083 is not a proper party to maintain in its own name an action for the recovery of independent and several claims of various members thereof.

(e) The above entitled action may not be maintained except by and for such individual employees as are named

in the complaint or such other employees as may properly intervene herein on their own behalf, setting up their specific claims.

(f) The complaint does not contain allegations sufficient to justify the bringing of any such class or representative action as is sought to be maintained.

II. More particularly, this defendant further moves:

1. That there be stricken from said complaint each and every allegation therein that the named individual plaintiffs sue for themselves and other employees "similarly situated," and each and every allegation making claims on behalf of or statements referable to employees "similarly situated," or to employees "such as" plaintiffs, or to employees "represented in this action," or "on whose behalf" the action is brought, or to any employees other than the named individual plaintiffs, and particularly such allegations found in: the second line of the opening paragraph of said complaint; lines 5 and 6 of paragraph 1; line 11 of paragraph 4; line 3 of paragraph 5; lines 1, 5 and 22 of paragraph 6; line 19 of paragraph 7; line 20 of paragraph 8; line 20 of paragraph 9. All of such allegations are immaterial and impertinent to any claim properly in issue in this action. In the alternative, this defendant moves that if such matters be not stricken, then plaintiffs be required by bill of particulars to set forth the names and addresses of the individual employees whom it is claimed are "similarly situated" with the named individual plaintiffs and whom it is claimed the plaintiffs represent and have a right to represent in the bringing of this action, and on whose behalf the action is said to be brought.

2. That there be stricken all of lines 7 through 15 of paragraph 1, and particularly the allegations therein that

Local 1083 of the United Pottery Workers of America has a majority of its members among the employees of this defendant and that said Union has been designated a representative of various of its members to bring this action. Such allegations are immaterial and impertinent to any claims properly in issue herein. In the alternative, this defendant moves that if such allegations be not stricken, then plaintiffs be required to advise this defendant by bill of particulars what employees of this defendant are members of said Union and which of its members among said employees have designated said Union to bring this action, and how such designation was made, and when and where it was made, and by what right the said Union can be named as a party herein.

3. That there be stricken the allegation in lines 8, 9 and 10 of paragraph 2 that certain employees are engaged in interstate commerce and covered by the provisions of the Fair Labor Standards Act of 1938. Such allegations are mere conclusions of law and are immaterial to the claims of the named individual plaintiffs, and are not properly pleaded. In the alternative, and if such allegation be not stricken, this defendant moves that plaintiffs be required by bill of particulars to state more definitely the names of the employees referred to, and (by allegation of facts, as required by the rules and practice of this Court) in what ways each of such employees are engaged in interstate commerce, or in what other way, if any, any of said employees are engaged in activities covered by the provisions of said Act, and, if so, what activities each of them are engaged in, and what weeks each of said employees did engage in said activities rendering them subject to the Act.

4. That there be stricken all of lines 10 through 17 of paragraph 2 and particularly the allegations therein that this defendant purchases raw materials in other states and sells its finished product in interstate commerce, all

the allegations in said lines contained being immaterial and impertinent to any of the issues raised in said complaint.

5. That there be stricken all of paragraph numbered 4 of said complaint for the reason that the allegations therein do not in any way refer to the named individual plaintiffs or to any claimants properly before the Court nor does said paragraph properly allege that any of the plaintiffs, or any individuals whose claims are sought to be presented herein, worked in excess of the maximum hours set up by said Fair Labor Standards Act without receiving compensation therefor at once and one-half their regular rate of pay. In the alternative, this defendant moves that, if said paragraph be not stricken, then plaintiffs be required to furnish a definite statement and particulars as to the names of this defendant's employees whom it is alleged were employed for a period of 45 hours a week without payment of overtime, and the weeks in which it is alleged that each of such employees did so work during all of the periods referred to in said paragraph 4 of the complaint, and the amount claimed to be due each of them by reason thereof.

6. That there be stricken all of paragraph numbered 5 of said complaint for the reason that the allegations therein do not in any way refer to the named individual plaintiffs or to any claimants properly before the Court nor does said paragraph properly allege that any of the plaintiffs, or any individuals whose claims are sought to be presented herein, worked in excess of the maximum hours set up by said Fair Labor Standards Act without receiving compensation therefor at once and one-half their regular rate of pay. In the alternative, this defendant moves that, if said paragraph be not stricken, then plaintiffs be required to furnish a definite statement and particulars as to the names of this defendant's employees whom it is alleged were employed for a period of 45 hours a week without payment of overtime, and the weeks

in which it is alleged that each of such employees did so work during all of the periods referred to in said paragraph 5 of the complaint, and the amount claimed to be due each of them by reason thereof.

7. That there be stricken from said complaint all of paragraph 6 thereof for the reason that all of the allegations therein made are immaterial and impertinent to any issues involved herein, there being no allegation that any of the individual plaintiffs (whose are the only claims properly before the Court) failed to earn the minimum wage of 30¢ an hour, or were required to or did do home work or suffered any wage deductions, and it appearing that one Marie Pearl, who is specifically referred to in said paragraph, is not a party to this action. In the alternative, this defendant moves that if said paragraph be not stricken, then plaintiffs be required to furnish a more definite and particular statement as to the names of the employees whom are claimed to be represented in this action, and whether each of said employees works on a piece work or on an hourly rate basis, and which of said employees it is claimed did not earn the minimum wage of 30¢ per hour, and the weeks in which it is claimed their earnings fell below such minimum, and which female employees in the decorating department were required to and did do "decal" work at home under orders of this defendant and without compensation therefor, and in what weeks such work was done by each of such employees, and how many hours of such home work it is claimed were worked by each of such employees in each such week, and what representative of this defendant it is claimed so required such employees to do "decal" work at home; and during what two-week period it is claimed one Marie Pearl received the sum of $21 for 80 hours work, and how many hours it is claimed the said Marie Pearl worked in each week of said two-week period; and the names of the employees of this defendant from whose salaries it is claimed the sum of 10% was deducted, and the weeks in which such deductions were

made as to each such employee, and in what manner and by whom such deductions are claimed to have been made, and whether it is claimed such deductions reduced the salaries paid to any such employees below the minimum required by law, and whether it is claimed the deductions were illegal, and if so on what grounds, and what employees are claimed to have been changed from one job to another at a continuation of the "beginner's" rate, and the nature and times of these instances, with full particulars thereof, and how much it is claimed is now due each of such employees and what number of hours and in what weeks it is claimed each such employee worked for less than the minimum wages as provided by law, and during what weeks it is claimed these offenses occurred.

9. That there be stricken from paragraph 7 all allegations referable to other employees than the individual plaintiffs herein, and particularly such allegations occurring in lines 9, 11, 13, 16, and 18 of paragraph 7, or, in the alternative, that plaintiffs be required to furnish particulars as to the names of the employees to whom it is claimed the allegations of this paragraph refer, and the weeks in which it is claimed the alleged acts occurred.

10. That there be stricken lines 1 through 8 of paragraph 8 of said complaint, such allegations not being shown to refer to any individuals whose claims are before the Court, and that there be stricken the allegations in lines 20 through 27 of said paragraph 8, such allegations being immaterial to any claims herein made. In the alternative, this defendant moves that if said allegations be not stricken, then plaintiffs be required to furnish full particulars as to how it is claimed Ernest Harms falsified on or about September 15, 1940, the time records of certain employees of this defendant, and the other occasions when it is claimed he made other falsifications, and the nature of each such claimed falsification, and the date thereof, and the names of the employees whose records

it is claimed were falsified on each such occasion; and the names of the employees to whom it is claimed there are due any sums of money for work performed in excess of the hours shown on the time cards, vouchers and payroll slips, and what sum is claimed to be due each of said employees, and during what weeks it is claimed such employees performed uncompensated work in excess of the hours shown on the time cards, vouchers and payroll slips, and the amount claimed to be due each such employee for each such week, and which of the employees are engaged in the respective departments referred to, and the names of the employees whom it is claimed were required to sign vouchers in blank, and the weeks in which it is claimed each such employees was so required to sign.

III. More particularly, this defendant further moves that in addition the plaintiffs be required to furnish a more definite statement and a bill of particulars with reference to the following allegations:

1. As to the allegations in paragraph 2, during what weeks since the effective date of the Fair Labor Standards Act it is claimed this defendant violated the provisions thereof, and what provisions of said Act it is claimed were violated by this defendant in each such week, and as to what employees it is claimed the Act was violated in each such week, and what sums are claimed to be due each such employee for each such violation.

2. As to all the allegations in paragraph 7, and particularly the names of the employees whom it is claimed were compelled to punch a time clock, and how in such procedure it is claimed this defendant deliberately falsified the records of the time worked by the employees; and the names of the employees whose records it is claimed were falsified, and as to what weeks it is claimed each of said employees worked in excess of the hours shown by such

time clock records, and the hours claimed to have been worked by each of such employees in each of such weeks, and what sums are claimed to be due each of such employees on account thereof, and what work it is claimed each of such employees did outside the hours indicated by said time clock records as hours worked.

3. As to the allegations in paragraph 8 of said complaint, which employees were required to sign blank vouchers, and in what weeks each of them were required so to sign, and in what weeks it is claimed each of said employees worked in excess of the hours shown on the time cards, vouchers and payroll slips, and how many hours it is claimed each of said employees worked during each of such weeks in excess of the number shown on said records, and what sums are claimed to be due each of them on account thereof.

4. As to the allegations in paragraph 9, the names of the employees to whom it is claimed this defendant is indebted for overtime, and the names of the employees to whom it is claimed this defendant is indebted for subminimum wages, and what sum is claimed for each of such employees for each of said reasons, and during what weeks it is claimed such indebtedness was incurred as to each such employee.

This motion is based on the files and records of this cause and upon the affidavit hereunto annexed.

Beaumont, Smith & Harris,
Albert E. Meder,
Frank E. Cooper,
Attorneys for Defendant The Mt. Clemens Pottery Co.,
2900 Union Guardian Bldg.,
Detroit, Michigan.

May 10, 1941.
County of Macomb—ss.

CHARLES E. DOLL, being first duly sworn, deposes and says that he is a resident of the City of Mount Clemens, Macomb County, Michigan, and is the Vice President and General Manager of The Mount Clemens Pottery Company, one of the defendants in the above entitled cause.

Deponent further says that he has read the complaint served in the above entitled cause and knows the contents thereof, and makes this affidavit in support of the several motions hereto annexed.

Deponent further says that a labor dispute is actively in progress at the plant of The Mount Clemens Pottery Company, and that a strike has been called, and that the labor dispute involves among other matters the claims of rival labor organizations as to their representation of the approximately one thousand employees of The Mount Clemens Pottery Company; and that deponent is informed and believes that a large number of said employees not belonging to Local 1083, United Pottery Workers of America, have no desire that the above entitled matter be prosecuted on their behalf, and on the contrary would be opposed to any claim that the above named plaintiffs do or ought to be allowed to represent them. Deponent further says that he does not know and is unable to ascertain what employees of The Mount Clemens Pottery Company, if any, in addition to the named individual plaintiffs, have authorized any of the plaintiffs to bring this suit on their behalf; and deponent further says that he has no means of ascertaining what, if any, employees of the Company may be claimed to be similarly situated as compared with the named individual plaintiffs in respect to the claims made herein; and that he has utterly no means of learning by whom or for whom this suit is being pressed, or what amount is being claimed for any employee, or in what

weeks it is claimed there occurred the violations of the Fair Labor Standards Act which are attempted to be alleged in the complaint. Deponent further says that he cannot ascertain the identity of the individuals to whom it may be sought to apply the allegations of the complaint, nor can he ascertain what employees or classes of employees may be claimed to be involved under the various and unrelated violations of the Fair Labor Standards Act charged in said complaint. Deponent further says that the employees of the Mount Clemens Pottery Company would not be similarly situated so far as concerns their status with reference to the claims made in said complaint, but that on the contrary there would be many different and divergent claims as to individual employees (if any of them had any just or lawful claims in the premises, which deponent denies), and that as deponent is advised and believes, there are no questions of fact and no claims of relief which would be common as to any class of employees.

Deponent further says that to the best of his knowledge the said Company has at all times fully complied with the requirements of the said law, and deponent further says that to the best of his knowledge and belief no employees of the Company were required to work forty-five hours per week at any time since 1938, and no sub-minimum wages were paid employees of the Company, and no employees were required to do any work at home, and no records have been falsified, as charged in the said complaint. Deponent further says that he believes the charges in said bill of complaint to be without foundation.

Deponent further says that he is advised by counsel and verily believes that (except to the extent that the issues would be simplified if the annexed motion to strike is granted) it would be impossible properly to prepare responsive pleadings or to prepare for trial unless plaintiffs are required to furnish particulars as to the em-

ployees claimed to be involved and as to the weeks in which it is claimed the Act was violated as to each such employee, and the nature and extent of the violation which it is claimed occurred in each such week as to each such employee, and as to the other matters as to which particulars are prayed in the annexed motion.

Chas. E. Doll.

Subscribed and sworn to before me this ninth day of May, A. D. 1941.

Eleanor Schulte,
Notary Public, Macomb County, Mich.
My commission expires Oct. 25, 1942.

ORDER

(Filed June 13, 1941)

At a session of said Court held at the Federal Building in the City of Detroit, County of Wayne, State of Michigan, on the 13th day of June, A. D. 1941.

Present: Honorable Frank A. Picard, District Judge.

This matter comes before the Court on three different motions of defendant, The Mt. Clemens Pottery Company:

First, dismissing the complaint insofar as it purports to be a class action;

Second, to strike certain allegations from the complaint; and

Third, more definite information on certain statements alleged in the complaint and bill of particulars.

This latter includes objections to certain interrogatories annexed to the complaint.

Both parties have filed citations but defendant in particular has prepared an extensive brief which the Court has examined carefully taking into consideration the purposes of the Fair Labor Standards Act and a practical common sense construction thereof.

This Court believes that in actions of this kind if a narrow interpretation is given to class suits, then very few such actions can be brought under the Wage and Hour Law. Undoubtedly all those who claim "over-time" can be

put in one classification; "Sub-minimum wages" in another; "home work" in another and "record falsification" is still another. But they are all employees, governed by the same law with the same rights. If claimants as employees could not through one person or agent—bring an action for the others as such—then an unlimited number of suits would have to be started for let us say "over-time" alone, or at least those claiming "over-time" and those claiming "sub-minimum wages," etc. Thus some employees would find themselves plaintiffs in four or five suits, which probably would be combined and tried as one when the parties got into court. Defendant surely cannot claim that this is the intent of either the statute or the rules. What harm then can follow from treating all the claimed ills of these plaintiffs in one suit? Surely it is the object and intent of the Fair Labor Standards Act and Federal Rules to consolidate all actions that may be combined into one action, and this is one case where, by the same witnesses, the same records, the same employer, the same questions can all be ironed out in one hearing, provided, of course, there is in the total of claimants a fair representation of all the employees of defendant, The Mt. Clemens Pottery Company.

This Court is also aware that the evidence upon which plaintiffs must depend is practically all in the hands of defendants The Mt. Clemens Pottery Company or possibly the Kresge Company and that plaintiffs must examine the books and records wherever they are in order to find out minutely and exactly what they may need. But in all fairness it should not be necessary for defendant to be ready in court with each and every record of all its 1,200 odd employees, and that is one reason why preliminary work of this nature should be done before trial.

We believe that if the interpretation by defendant of Saxton v. W. S. Askew Co., 35 Fed. Supp. 519 is correct,

such a holding would be too narrow and we are inclined to follow the law as laid down in Fishman v. Marcourse, 32 Fed. Supp. 460 as to what are or are not class suits. But on page 463 of that opinion it is stated:

> "This right to examine books and records of the opposing party should be limited, however, to an examination of the material records pertaining solely to the parties bringing this suit."

In other words, plaintiffs are not to be permitted to embark upon a fishing expedition under the guise of a class suit and evidently the law is so written as to permit one or more persons to institute a class suit, yet limiting the right to examine records to those actually interested in the action before the Court. Anyone desiring to intervene could but the decision of the Court would probably be stare decisis of the rights of anyone who had not, and we have been shown no decision yet that would permit one party to bring an action for an entirely different group who were not interested in protecting their own rights or who might prefer to have other representation—legal or otherwise. We admit that this presents a situation that is rather paradoxical, but until there has been a further clarification by higher courts, we are forced to hold that Congress conceived that one employee would not voluntarily see another employee establish a right to more compensation to which he was also entitled and not demand the same or that the employer, being conscious of possible further litigation, would not immediately rectify the wrong that had been righted under a class suit. And finally, there is always the action of the government itself criminal in nature that the employer would have to consider.

Plaintiffs are therefore ordered to prepare a bill of particulars showing those whom they represent and whom they claim fall within each specific division, such as "overtime," "sub-minimum wages," etc., so that defendant may

be prepared to meet the same. For that purpose and to secure that information, plaintiffs may examine the books and records of defendant, The Mt. Clemens Pottery Company (and records of the Kresge Company, if any on violations concerning those persons) and also such correspondence as there may be between defendants tending to prove control by defendant Kresge over the policies and affairs of The Mt. Clemens Pottery Company.

As for joinder of CIO as a party plaintiff, it is hereby ordered that Local 1083, United Pottery Workers of America, affiliated with the Congress of Industrial Organizations be required to produce evidence of its authority to act as plaintiff and for whom it is acting, not upon a majority vote of the members of its own union but it must be the individual designation by each person who has selected the Union to act as its agent. This Court holds that under the Act, Title 29, Section 203(a) the Union has the authority to act for those persons who may select it—subject, of course, to the above showing.

All other motions are denied, without prejudice.

Frank A. Picard,
United States District Judge.

DESIGNATION

(Filed July 8, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Albert Weier
Delia Weier
Edna Eschenburg
Martin Kukuk
Curtis Copeland
Dorothy Ahlers
John Rachow
Louis Ludeman
Gertrude Cross
Arthur Eckert
Lawrence Miller
Theodore Miller
James D. Osborne

DESIGNATION

(Filed July 8, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Walter Selk
Jean Tewksbury
Mary Rozanski
Henry Kauten
William Alband
Robert Gombert
Edwin Weier
Arthur Daigneult
Earl C. Masters
B. Stark
Carl Schoof

DESIGNATION

(Filed July 8, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Harry May
Norma Kethe
Eva Freddle
Mabel Van Rosenberg
Esther Noe
Alma Stanke
Chesley Tebo
Ilene Starkey
Evelyn Mae Brede
Bernice Brede
Margaret Logghe
Ruth Rondo
Marian Kandt
Ruth Gooley
Pat Garcia
George E. Schroeder
Emerson Ulman
Delbert Phillips
Merle Batkins
Verlon Spicer
Ruth Parrott
Elsie Teise
Beatrice Schramm
Robert Daniels
Helen Daniels
Lavina Goldenbogen
Shirley Collins
Marie Miller
Virginia Lulay
Rita Sabatini
Francis Godin
Burnetta Young
Eila Contri

DESIGNATION

(Filed July 5, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Arthur Baxter
Floyd Hasse
Martha Peters
Steve Anderson
Elmer Sahrow
Nick Dacko
John Felong
Louis Collin
Albert Thomas
Fred V. Pearl
Floyd Pearl
Marie Pearl
Clayton Masters
Walter Thoel
Tom Tesner
LaVerne Kotzke
John Weiner
Walter Brandt
Paul Starkey
Edwin E. Suer
Anna Mayabb
Earl Trombley
Clarence Schwartz
Nelson Luchtman
Louis Thoel
Andrew Heisner
Arthur Pretzer
Howard Blumeister
Paul Siewart
Gerald Hotchkiss
David Kandt

DESIGNATION

(Filed July 8, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each, hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Ruth Gottschalk
Esther Sonntag
Pauline Fobbe
Marion Fetty
Dorothy Weiner
Emma E. Sahr
Margaret Campbell
Gladys Harms
Lorraine Zieman
Margaret Zieman
Mary Phillips
Mildred Zienert
Edna G. Nicks
Eleanora Ulhrich
Viola Harms
Barbara Boeling
Dorothy Kempff
Ethel Socia LaForest
Helen Kuzdzal
Helen Haus
Lia DeKiere
Mary Sawicki
Mary Scheible
Lorraine Jackson
Mary Cowhy
Lucille Pretzer
Esther Hurtienna
Elvira Hicks
Glen Stafford
John Ritter
Viola Thurman
Frank Sutton
Anthony Petrucci
Robert Wilder
Eva Pierzina
Eliz. Campau
Olga Neal
Elizabeth Marleau
Gertrude Boyer
Alfred Paliniewicz
Elsie Elgert
Edna Scheible

Marie Kanekowski
Elizabeth Tupschov
Ruth Jackson
Margaret DeKiere
Elaine Richards
Leona DeBusschere
Adelia Rauschelbach
Josephine Schuster
Ruth Bruder
Janet Olewnicki
Genevieve Olewnicki
Agnes Manchik
Molly Bruder
Carl Nicka
Shirley Fox
Leo Stafford
Clair Dubay
Paul Kaiser

George Ehrke
Jennie Mallast
Helen Redlawski
Marjory Engelbrecht
Leona Schroeder
Helen Gutt
Katherine Kulman
Beatrice Beach
Florence Kleinhans
Wanda Jakubiak
Virginia Krohn
Stella Jurek
Viola Meyers
Emma Harms
Evelyn Crombez
Artilla Weier
Walter Ciscke

DESIGNATION

(Filed July 8, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Arthur Sibbe	Elinor Bohorski
Ray Trombley	Evelyn Hildinger
Wesley Reeder	Rita Schulte
Robert Hicks	Dorothy Gaffke
James Browne	Tinnie Zavaruka
Bob Jackson	Louise Cronk
Samuel Howcroft	Twila Mayabb
Bertha Hildinger	Florence Schuetzler
Luella Rohrbeck	Louise Jackman
Lillian Socia	Marion Schleussler
Stella Baade	Edith Kenney
Helen Apfel	Olive Hay
Leona Zychski	John Metz
Katherine Osterman	Harold Pearl
Agnes Goldenbogen	Claude Cottrell
Hilda Gohl	Joyce Brusseau
Marie Leenkneght	Clarence Burgess
Kathryn Vertin	Catherine May
Margaret Yochum	Elsie Graham
Olga Denisuik	Walter Nofzinger
Susie Crewe	Kurt Jankowski
Marvin Goldenbogen	Shirley Schroeder

Violette Bell
Martha Lozen
Paul Frazho
Julia Kudla
Antoinette Kudla
Wells Clay
Stanley Reeder
Preston Smith
Albert Schippocasse
Kenneth Jorgenson
Kay Snyder
Wilma Redlawski
Albert Watkins
Wm. Wendt
Earl Larimer
Louis Thurman
Adam Lehl
Marcel Dupont
Dorothy May
Julia Bousson

Harold Chaltron
Francis Watkins
Ernest Glawe
Leo DeScheppers
Clarence Liebzeit
Raymond Barg
Esther Sopha
Bernhardt Sopha
Sherman Bingle
Emerson Conners
George Liebzeit
Donald McVicar
Martha Cumeralto
Ann Rettig
Eileen Burtle
Harry Lozon
George Houthoofd
Thomas Persinger
Jerome Houthoofd

DESIGNATION

(Filed Sept. 29, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each hereby designate said Union and the named plaintiffs to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Huela H. Wilson, 15, Mt. Clemens.
Frank Campau, Box 77, Mt. Clemens.
Eric Sopha, 160 Barbara, Mt. Clemens.
Mikel Schohn, 69 Euclid Ave., Mt. Clemens.
Glenn Dill, 2770 Houron Rockester, Mt. Clemens.
Arthur J. Meitz, 432 Cass Ave., Mt. Clemens.
Russell Shattuck, Washington, Mich.
Paul A. Frazho, 2268 Union Lake.
E. Miller.
Helen Persinger, 3201 Utica Rd., Utica, Mich.
Ruth Krause, R. No. 2, Mt. Clemens.
Otto Kuhuh, 4918 Canal Road.
John Schalm, 69 Euclid Ave.
Paul Siencert, 129 Meadle St., Mt. Clemens.
Norman Almstedt.
Elmer Glefke.

BILL OF PARTICULARS

(Filed Oct. 23, 1941)

Now comes the plaintiffs and in response to the order of the Honorable Frank A. Picard, Judge of the District Court of United States for the Eastern District of Michigan, Southern Division, which order was entered upon the docket of this Court on the 13th day of June, 1941, file this Bill of Particulars.

In accordance with the order aforesaid (Paragraph 4, Page 1) four classifications are set forth, to-wit:

(1) Those employees who claim "overtime,"

(2) Those employees who have received "sub-minimum wages,"

(3) Those employees who performed "home work," and

(4) Those employees whose "records have been falsified."

I

OVERTIME

Plaintiffs in pursuance to the order of the Honorable Frank A. Picard, Judge of the District Court of the United States for the Eastern District of Michigan, Southern Division, have heretofore filed with the clerk of this Court a list of the employees of the Mt. Clemens Pottery Com-

pany whom they represent in this action. A copy of said list of employees is attached hereto and for the purpose of this Bill of Particulars is referred to as Exhibit "A." Each of said employees claims overtime.

II

SUB-MINIMUM WAGES

In accordance with the order of the Honorable Frank A. Picard, Judge of the United States District Court, Eastern District of Michigan, Southern Division, authorization to represent certain employees has been filed with the Clerk of this Court. Copy thereof is attached hereto and made a part hereof and the same is marked Exhibit "A."

Plaintiffs on information and belief allege the fact to be that the female employees listed in said Exhibit "A" received "sub-minimum wages," to-wit: less than 30¢ an hour, the minimum permitted under the Fair Labor Standards Act of 1938.

III

HOME WORK

Under the order of the Honorable Frank A. Picard, Judge of the District Court of the United States for the Eastern District of Michigan, Southern Division, authorization of the plaintiffs to act in behalf of employees of the Mt. Clemens Pottery Company was filed with the Clerk of this Court and same is marked Exhibit "A" and is attached hereto and made a part hereof.

Plaintiffs are informed and on such information and belief state that certain females employed in said Com-

pany therein performed "home work." Plaintiffs are not able to give the names of said female employees performing "home work," the same not appearing on the records of the defendants examined by these plaintiffs. That said information, however, is in the exclusive possession of the defendant, Mt. Clemens Pottery Company, and plaintiffs are not able at this time to furnish defendants with the names of said persons doing such "home work."

IV

RECORD FALSIFICATION

Under the order of the Honorable Frank A. Picard, Judge of the United States District Court, Eastern District of Michigan, Southern Division, plaintiffs have furnished the Clerk of this Court with written authorization of the employees for whom said plaintiffs bring this action. Copy of said authorization is marked Exhibit "A" and the same is attached hereto and made a part hereof.

The record of each of the employees whose names appear in Exhibit "A," represented by these plaintiffs, and purporting to show the hours worked by said employees are each incorrect and false. Said records do not reveal the time worked by said employees. The defendant, Mt. Clemens Pottery Company, has credited each employee of said Company with less than the actual time worked.

The time cards of each of said employees reveal the actual time worked, but the computation of the total hours worked has been falsified and incorrectly computed. There is attached hereto and set forth below sample time card records which are characteristic and typical of all of the time cards of all of the employees of said Mt. Clemens Pottery Company, including those whose names appear on Exhibit "A."

Ray Trombley—Payroll No. 685—Ending Dec. 5, 1939
Social Security No. 370-10-0179

	A.M. In	Noon Out	Noon In	Night Out	Company Time	Actual Time Worked
Wed.	6:46	12:01	12:46	4:21	8¼	8 hours, 50 min.
Thur.	6:46	12:01	12:46	4:22	8¼	8 hours, 51 min.
Frf.	6:46	12:01	12:46	4:35	8½	9 hours, 14 min.
Mon.	6:47	12:01	12:46	4:29	8¼	8 hours, 54 min.
Tues.	6:46	12:02	12:46	4:35	8½	9 hours, 5 min.
Wed.	6:46	12:01	12:46	4:10	8	8 hours, 39 min.
Thur.						
Fri.	6:47	12:01	12:46	4:09	8	8 hours, 36 min.
Sat.	6:46	11:47	1:01	4:40	8	8 hours, 40 min.
Mon.	6:46	12:01	12:46	4:32	8½	9 hours, 1 min.
Tues.	6:45	12:00	12:46	4:14	8	8 hours, 43 min.
			Total		82¼	88 hours, 36 min.

Violette Bell—Payroll No. 1216—Ending Dec. 12, 1939

	A.M. In	Noon Out	Noon In	Night Out	Company Time	Actual Time Worked
Wed.	7:03	11:57	12:34	3:57	7½	8 hours, 17 min.
Thur.	7:04	11:56	12:33	3:55	7½	8 hours, 14 min.
Fri.	7:04	12:01	12:33	3:45	7¾	7 hours, 59 min.
Mon.	7:04	11:59	12:34	3:12	6¾	7 hours, 33 min.
Tues.	7:03	11:55	12:33	4:27	8	8 hours, 46 min.
Wed.	7:04	11:58	12:34	4:28	8	8 hours, 48 min.
Thur.	7:03	11:58	12:33	4:28	8	8 hours, 50 min.
Fri.	7:03	11:42	12:32	4:35	8	8 hours, 42 min.
Sat.						
Mon.	7:04	11:52	12:33	4:26	8	8 hours, 41 min.
Tues.	7:03	11:58	12:33	4:18	8	8 hours, 40 min.
			Total		77½	84 hours, 30 min.

Luella Rohrbeck—Payroll No. 806—Ending Dec. 12, 1939
Social Security No. 377-18-2048

	A.M. In	Noon Out	Noon In	Night Out	Company Time	Actual Time Worked
Wed.	6:33	11:54	12:37	3:31	7¾	8 hours, 15 min.
Thur.	6:33					
Fri.	6:32	11:56	12:35	3:51	8	8 hours, 40 min.
Mon.	6:32	11:55	12:36	3:47	8	8 hours, 34 min.
Tues.	6:33	11:54	12:36	3:47	8	8 hours, 32 min.
Wed.	6:32	11:54	12:37	3:50	8	8 hours, 35 min.
Thur.	6:32	11:54	12:37	3:51	8	8 hours, 36 min.
Fri.	6:32	11:54	12:52	3:45	7¾	8 hours, 18 min.
Sat.						
Mon.	6:32	11:52	12:37	3:47	8	8 hours, 30 min.
Tues.	6:33	11:53	12:36	3:48	8	8 hours, 32 min.
			Total		71½	76 hours, 32 min.

Robert Jackson—Payroll No. 1301—Ending Dec. 12, 1939
Social Security No. 376-16-2280

	A.M. In	Noon Out	Noon In	Night Out	Company Time	Actual Time Worked
Wed.	6:52	11:55	12:51	4:37	8¼	8 hours, 49 min.
Thur.	6:51	11:53	12:51	4:41	8¼	8 hours, 52 min.
Fri.	6:51	11:54	12:51	5:11	8¾	9 hours, 23 min.
Mon.	6:50	11:54	12:51	4:36	8¼	8 hours, 49 min.
Tues.	6:51	11:52	12:54	4:30	8¼	8 hours, 37 min.
Wed.	6:51			3:39	8½	8 hours, 48 min.
Thur.	6:51	12:21		4:54	9	10 hours, 03 min.
Fri.	6:50	11:52	1:05	5:30	9	9 hours, 27 min.
Mon.	6:50	11:50	1:01	4:53	8¼	8 hours, 52 min.
Tues.	6:51	11:48		2:01(4:43)7		7 hours, 39 min.
			Total		83½	89 hours, 43 min.

Bertha Hildinger—Payroll No. 1011—Ending Dec. 12, 1939
Social Security No. 370-09-9874

	A.M. In	Noon Out	Noon In	Night Out	Company Time	Actual Time Worked
Wed.	6:50	11:59	12:49	4:13	7¾	8 hours, 33 min.
Thur.	6:49	11:59	12:49	4:12	7¾	8 hours, 33 min.
Fri.	6:50	11:58	12:49	4:12	7¾	8 hours, 28 min.
Mon.	7:01	11:51	12:49	4:18	7¾	8 hours, 25 min.
Tues.						
Wed.	6:49	12:06	12:49	4:11	8	8 hours, 39 min.
Thur.	6:50	12:06	12:49	4:07	8	8 hours, 34 min.
Fri.	6:49	12:03	1:04	4:35	8¼	8 hours, 45 min.
Mon.	7:01	11:55	12:49	4:29	7¾	8 hours, 34 min.
Tues.	6:49	11:59	12:49	4:10	7¾	8 hours, 31 min.
			Total		70¾	78 hours, 2 min.

The foregoing examples of the time worked, together with the computations of said Company are typical of all the time cards of said employees of the said Mt. Clemens Pottery Company and indicate the erroneous computations of said Company and the manner by which said Company deprived each of said employees of a true and correct record of and payment for the total hours worked. Said Mt. Clemens Pottery Company has not paid any of the employees whose names appear on said Exhibit "A" for the actual time worked.

Respectfully submitted,

Edward Lamb,
Counsel for Plaintiffs.

MOTION TO STRIKE OR FOR FURTHER PARTICULARS

(Filed Nov. 1, 1941)

Comes now The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by Beaumont, Smith & Harris, its attorneys, and moves (A) that the plaintiffs' complaint herein be stricken because of plaintiffs' failure to comply with the order of this Court as to furnishing particulars and a more definite statement of claim, or (B) that plaintiffs be required to furnish further particulars and a more definite statement of their claim as hitherto ordered to enable this defendant properly to prepare its responsive pleadings, or to prepare for trial, and (C) that Subdivision IV of the purported bill of particulars heretofore filed herein be stricken and that the Court make such further order as it deems just. This motion is based on the provisions of the rules of civil procedure (and particularly Rule 12 thereof) and on the following facts and circumstances:

1. Heretofore, to-wit, on June 13, 1941, plaintiffs were required by an order of this Court to furnish a bill of particulars (1) showing by individual designations the persons claimed to be represented by plaintiffs, and (2) setting forth which of such individuals are claimed to be within each of the categories or classifications described in the complaint herein, wherein the divers claims of the several plaintiffs were classified under certain headings.

2. To enable the plaintiffs to obtain all the information desired in order to furnish a bill of particulars, this defendant made available to plaintiffs in Detroit, Michigan,

its records as to the hours worked by said plaintiffs and by the employees claimed to be represented by them, and as to the wages received by such individuals. Defendant engaged an independent auditor, who was particularly familiar with such books and records, to explain the same to plaintiffs' attorney; and plaintiffs were furnished all available information requested by them as to all their several claims.

3. On or about October 23, 1941, plaintiffs served on this defendant a certain so-called bill of particulars, but the bill so furnished is not in compliance with the order of this Court, and does not contain the information necessary to enable this defendant properly to plead or to prepare for trial. And in this connection, this defendant shows unto the Court more particularly:

A. The bill of particulars does not comply with the aforementioned order of this Court, dated June 13, 1941, in that it makes no attempt to specify which of the plaintiffs, if any, fall within the following classifications or divisions set forth in the complaint:

(a) The complaint charged that employees were required to work 45 hours a week without extra compensation for overtime; but the bill of particulars fails to specify any individuals claimed to fall within this classification; and defendant shows that the complaint should be stricken or that plaintiffs should be required to state whether this claim is abandoned or, if not, which of the plaintiffs are claimed to fall within this classification, as required by this Court's prior order.

(b) The complaint charged that employees began work in advance of the time shown on their time clock cards and quit work later than the time shown on such cards; but the bill of particulars fails to specify any individuals

falling within this designation; and defendant shows that plaintiffs' complaint should be stricken or that plaintiffs should be required to abandon this claim or to specify, as required by the Court's prior order, which employees are claimed to fall within this classification.

(c) The complaint further charged that as to another class of employees, defendant violated the Fair Labor Standards Act and falsified its records by requiring employees to sign blank vouchers which were afterwards filled in by the company to indicate alleged hours worked and wages paid. However, the bill of particulars fails to specify any individuals claimed to fall within this division or classification; and the complaint should be stricken or plaintiffs should be required in accordance with the prior order of the Court to specify what individuals are claimed to fall within this class, or else to abandon the claim.

(d) The complaint further charged that women employees in defendant's decorating department were required to do "decal" work at home without compensation, but despite the requirements of this Court's order requiring plaintiffs to specify what employees were claimed to fall within this category and despite the fact that many women employees are claimed to be represented by plaintiffs, nevertheless the bill of particulars fails to specify any individuals claimed to fall within this category. Instead, the bill avers that plaintiffs are unable to furnish this information, and defendant shows that in the absence of the giving of such information, the claims based on alleged homework should be stricken.

(e) Similarly, the bill of particulars fails to specify what women employees are claimed to have received subminimum wages; and for this further reason the complaint should be stricken or plaintiffs should be required to furnish particulars as ordered by the Court or to abandon this claim.

(f) Further, this defendant shows unto the Court that the following classifications or divisions are set up in the complaint but, despite this Court's order and despite plaintiffs' examination of defendant's records, nevertheless no particulars have been given as to the identity of the individuals claimed to fall within any of the following classifications:

(i) A group of 40 women employees whose clock cards were "punched out" by their foreman before the employees stopped work, on September 15, 1940, and on other occasions.

(ii) Employees from whose wages it is alleged this defendant deducted certain fixed percentages, in violation of the law.

(iii) Employees who it is claimed were shifted from one job to another, at a continuation of an alleged "beginner's rate" of pay.

(iv) Employees claimed to be compensated on a "bonus" basis.

Defendant shows unto the Court that therefore the complaint should be stricken, or plaintiffs should be required, in accordance with the prior order of the Court, to specify the individuals claimed to fall within each of the aforesaid categories, or else abandon these claims.

B. The said bill of particulars wholly fails to set forth plaintiffs' claims with sufficient definiteness to enable defendant properly to prepare its responsive pleadings or to prepare for trial, no specific statement being given as to any of the following:

(a) The basis and meaning of the general allegation in said bill of particulars that each of the employees represented by plaintiffs claims "overtime" is not made clear. Plaintiffs' examination of defendant's records dis-

closed that all plaintiffs were paid extra compensation for all hours of overtime work, as computed and recorded in this defendant's records; and therefore unless plaintiffs specify in what respects it is claimed their hours of work were greater than those for which they were paid, it will be quite impossible for this defendant to know what the actual claim of the plaintiffs may be in this regard.

(b) The pleadings do not reveal the basis of the claim that certain women employees among the plaintiffs are "believed" to have received sub-minimum wages, although this defendant's records, examined by plaintiffs, show that all of this defendant's women employees receive wages at least equal to, and that nearly all of them receive wages well above, the minimum provided by law.

(c) The plaintiffs have furnished no particulars as to the nature of the claim that none of the plaintiffs have been paid for actual time worked, and this defendant is unable properly to prepare its responsive pleadings or to prepare for trial without such information. In this connection, this defendant shows that all or nearly all of the plaintiffs are compensated on a piece-work basis, and therefore at least in weeks where their hours of work do not exceed the maximum provided by statute, their compensation does not in any manner depend on the hours worked; nevertheless plaintiffs in their bill of particulars refer to certain specific instances wherein employees admittedly working fewer hours than the maximum fixed by law (even on plaintiffs' theory that all the time spent by the employee on defendant's premises constituted hours of work) are claimed not to have been paid for the actual time worked.

(d) The said bill of particulars wholly fails to specify what amount is claimed for each employee, or how such claimed amount is computed, or when it accrued; and

therein fails to comply with long standing requirements and practices as to the nature of bills of particulars.

(e) This defendant further shows that the bill of particulars utterly fails to accomplish the purpose described in this Court's prior order, i. e., eliminating the necessity of defendant being ready in court with every record of every plaintiff, by completing before trial all the preliminary work of computing the amount of each plaintiff's claim, and the basis thereof.

C. That portion of the bill of particulars headed "IV. Record Falsification" should be stricken in its entirety, for the reason that it is immaterial to any of plaintiffs' claims, inasmuch as Section 16(b) of the Fair Labor Standards Act, under which this action is alleged to be brought does not create any right of action for damages based on alleged errors in the keeping of records by an employer as to hours worked by employees.

Wherefore, defendant prays that this Court enter an appropriate order or orders:

(a) Striking the complaint because of plaintiffs' failure to furnish particulars as hitherto ordered by the Court, or requiring the furnishing of such particulars in accordance with the Court's prior order, as to the details described in Subdivision 3A of this motion;

(b) Requiring plaintiffs to furnish defendant (if the complaint is not stricken) with further particulars as to the details described in Subdivision 3B of this motion;

(c) Striking Subdivision IV of the purported Bill of Particulars heretofore filed by plaintiffs.

In support of this motion, defendant will rely on the Court rules in such case made and provided, and on the pleadings and orders in this cause, and on the affidavit annexed hereto.

Beaumont, Smith & Harris,
Albert E. Meder,
Frank E. Cooper,
Attorneys for Defendant, Mt. Clemens Pottery Company,

2900 Union Guardian Building,
Detroit, Michigan.

Dated: Oct. 31, 1941.

AFFIDAVIT

State of Michigan,
County of Macomb—ss.

CHARLES E. DOLL, being first duly sworn, deposes and says that he is a resident of the City of Mount Clemens, Macomb County, Michigan, and is the Vice President and General Manager of The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, and makes this affidavit in support of the annexed motions.

Deponent denies the allegation in the purported bill of particulars filed by plaintiffs that information as to the names of women employees performing "home work," as alleged in the complaint, is in the exclusive possession of the Mt. Clemens Pottery Company, and on the contrary deponent says that none of the employees of the Mt. Clemens Pottery Company have ever been permitted to take any work out of the plant, and the company has no knowledge nor does deponent of the nature of plaintiffs' claims in this regard.

Deponent further says that following and pursuant to the order of this Court dated June 13, 1941, he arranged

through his attorneys to make available to plaintiffs all of the records of the Mt. Clemens Pottery Company as to the hours worked by the employees represented in this action, and the wages received by them; and deponent further arranged for the presence of an auditor, who was thoroughly familiar with such books and records, to explain them to plaintiffs' attorney; and deponent directed that plaintiffs' attorney be assured that this defendant would segregate such records and look up all information requested as rapidly as plaintiffs' compilers might require in order to complete their examination. Deponent further says that neverthless, after an examination of such records had been carried on for some days by plaintiffs' representatives, the same was discontinued without notice to this defendant, and despite an appointment to continue such examination.

Deponent further says that to the best of his knowledge The Mt. Clemens Pottery Company has at all times fully complied with the requirements of the Fair Labor Standards Act, and he believes the broad charges in the complaint, which plaintiffs refuse to particularize, to be without foundation; and in this connection deponent points out that the only particular claim made is to the effect that the said company in computing hours worked by its employees did not include odd minutes spent by an employee on company premises before the start of work, or after the close of work and deponent further says as to this that the method in which such computations were made was approved by the Wage and Hour Division and by the employees and was entirely proper and lawful, as deponent is advised and believes.

Chas. E. Doll.

Subscribed and sworn to before me
this 1st day of November, 1941.

Agnes E. Benbennick,
Notary Public, Macomb County, Mich.
My commission expires Feb. 21, 1943.

ORDER

(Filed Nov. 10, 1941)

At a session of said Court held at the Federal Building, in the City of Detroit, County of Wayne, State of Michigan, on the 10th day of November, 1941.

Present: Honorable Frank A. Picard, District Judge.

This matter comes before the Court upon the motion of the defendant Mt. Clemens Pottery Company to strike plaintiffs' complaint or that plaintiffs be required to furnish further particulars, and the Court being fully advised in the premises, and after hearing argument of counsel for all parties, finds as follows:

1. That the motion of the defendants to strike the complaint is not well taken and should be and is hereby overruled.

2. That the motion of the defendant Mt. Clemens Pottery Company for further particulars as to a list of the employees who seek overtime is not well taken; the Court finds that said list has been furnished by plaintiffs in the "Exhibit A" which has been attached to plaintiffs' Bill of Particulars heretofore filed.

3. Plaintiffs by their counsel in open Court having stated that they are unable or unwilling to furnish a list of employees who fall into the classification of those claiming compensation for "home-work," and the Court therefore finds said claims are waived by the named plaintiffs herein. Plaintiffs shall furnish names of those em-

ployees who claim minimum wage compensation and also the names of those employees who claim greater hours worked than those shown on the time cards.

4. Plaintiffs shall, on or before November 24, 1941, file an amendment to the Bill of Particulars heretofore furnished, which amendment shall set forth the claims upon which said named plaintiffs assert that the hours worked and the wages paid by defendant Mt. Clemens Pottery Company were erroneously computed. The Court orders said defendant Mt. Clemens Pottery Company to have all records of wages paid and hours worked by the plaintiffs whose names appear on "Exhibit A" from September 24, 1938, to the date of the filing of the complaint herein made available for examination by plaintiffs' agents. The Court further finds that if said records are not made available to the agents of the plaintiffs whose names appear on "Exhibit A" attached to said Bill of Particulars, then and in that event said Court will appoint its own agent to examine said records.

All other motions are denied, without prejudice.

Frank A. Picard,
United States District Judge.

ORDER

(Filed Nov. 24, 1941)

At a session of said Court held at the Federal Building, in the City of Detroit, County of Wayne, State of Michigan, on the 24th day of November, 1941.

Present: Honorable Frank A. Picard, District Judge.

The Court having been advised that counsel for all parties have been diligently pursuing the examination of the records herein finds that said examination cannot be completed on or before November 24, 1941.

The Court, therefore, amends its order entered herein on November 10, 1941, to permit the plaintiffs herein to file their Amendment to the Bill of Particulars on or before December 15, 1941.

Frank A. Picard,
United States District Judge.

AMENDMENT TO PLAINTIFF'S BILL OF PARTICULARS

(Filed November 26, 1941)

Now come the plaintiffs and, pursuant to an order of the Honorable Frank A. Picard, District Judge for the Eastern District of Michigan, Southern Division, entered on the docket of this court November 10, 1941, and file this Amendment to their Bill of Particulars.

I.

Pursuant to paragraph number 3 of said order, plaintiffs state that there is attached hereto and marked "Exhibit B" a list of those plaintiffs who claim minimum wage compensation, and also the names of employees who claim greater hours than those shown on the time cards of said employees of The Mt. Clemens Pottery Company.

II.

Plaintiffs state in answer to paragraph number 4 of said order of November 10, 1941, that the claims upon which the named plaintiffs herein assert that the hours worked and the wages paid by defendant, Mt. Clemens Pottery Company, were erroneously computed, arise in the following manner:

(A) The defendant Mt. Clemens Pottery Company does not pay the employees for the time worked, nor does said company pay said employees in accordance with the time set forth on the time cards maintained by said Mt. Clemens Pottery Company. For all the time worked by all of the named plaintiffs and by all those

whose names appear on "Exhibit A" of the Bill of Particulars, as well as in the cases of all other production employees of the Mt. Clemens Pottery Company, the said company has deducted from the time worked, as shown on said time cards, a period of as much as 56 minutes each day. The company accomplishes this deduction from the time worked by the method of crediting employees with the working time only from the succeeding quarter-hour when an employee checks in, and the company credits said employee with work performed only from the preceding quarter-hour period when the employee checks out at noon or at the conclusion of the employee's shift. For instance, an employee who reports and begins work at 6:46 A.M., is credited with working only for work from 7:00 A.M. When the same employee checks out to lunch at 12:14, the company, in paying said employee, pays him only for work up to 12:00 noon. When he reports back from lunch at 12:46 P.M., the company pays him only for time worked from 1:00, and when he reports out at night at 4:29, the company pays him only for work to 4:15. This situation is true of every time card of every employee in The Mt. Clemens Pottery Company, and is specifically true of every employee whose name appears on Exhibits A and B of this Bill of Particulars and the Amendment to the Bill of Particulars.

Materiality of this is shown in paragraph (B) hereof, where the employees work the statutory number of hours, according to the company's erroneous and false computation of the hours worked, but plaintiffs state that each time card and the computation thereof is false as to every employee whose name appears on Exhibits A and B. The following are examples only of what is true in every case of every employee of The Mt. Clemens Pottery Company.

Louise Jackman, for the period ending June 11, 1940, checked in on Monday at 6:50 A.M., out at 12:00 noon,

returned from lunch at 12:51, and worked until 4:27. The company's computation for time was 8¼ hours. She actually worked 8 hours and 46 minutes. Each day the same false computation took place, but the company credited her with having worked only 84 hours for the two-week period ending June 11, 1940, so that the company paid her no overtime compensation.

Leo Stafford, Social Security card No. 370-10-1884, reported at 6:50 A.M., worked until 11:50 A.M., returned from lunch at 1:05, and quit work at 5:00 P.M. He actually worked 9 hours, but the company credited him on that day for 8½ hours.

For convenience, there follows examples of computations erroneously made for four of the plaintiffs herein, but the examples which are set forth are typical of every time card of all of the employees named in Exhibits A and B of plaintiffs' Bill of Particulars and the Amendment to the Bill of Particulars.

Samuel E. Hawcroft—Payroll No. 1300—Ending Dec. 12, 1939—Social Security No. 369-16-1698

	A.M. In	Noon Out	Noon In	Night Out	Company Time	Actual Time Worked
Wed.	6:53	12:57	1:47	4:25	8	8 hours, 42 min.
Thurs.	6:56	2:42	2:53	4:39	9	9 hours, 32 min.
Fri.	6:51	12:52	1:05	5:12	9½	10 hours, 11 min.
Mon.	8:03	1:38			4¼	4 hours, 35 min.
Tues.	6:53	12:00	12:45	4:40	8¾	9 hours, 2 min.
Wed.	6:56	10:06			3	3 hours, 10 min.
Thurs.	6:54	11:57	12:37	4:31	8½	8 hours, 57 min.
Fri.	6:54	12:21	1:09	4:04	8	8 hours, 12 min.
Mon.	6:55	1:07	1:51	5:41	9½	10 hours, 2 min.
Tues.	6:53	12:03	1:14	4:20	8	8 hours, 16 min.
			Total		76½	80 hours, 39 min.

Wesley Reader—Payroll No. 669—Ending July 30, 1940
Social Security No. 370-09-9137

	A.M. In	Noon Out	Noon In	Night Out	Company Time	Actual Time Worked
Wed.	6:49	12:04	12:47	4:55	8¾	9 hours, 23 min.
Thurs.	6:48	12:04	12:47	4:21	8¼	8 hours, 50 min.
Fri.	6:48	12:04	12:48	4:32	8½	9 hours
Mon.	6:47	12:04	12:48	4:33	8½	9 hours, 2 min.
Tues.	6:47	12:04	1:02	4:48	8½	9 hours, 7 min.
Wed.	7:02	12:05	12:47	4:33	8¼	8 hours, 53 min.
Thurs.	6:47	12:02	12:47	4:23	8¼	8 hours, 51 min.
Fri.	6:47	11:54	1:02	4:50	8¼	8 hours, 59 min.
Mon.	6:48	12:02	12:47	5:45	8¾	9 hours, 2 min.
Tues.	6:49	12:03	12:47	4:24	8¼	8 hours, 51 min.
			Total		84¼	89 hours, 58 min.

Arthur Sibbi—Payroll No. 920—Ending August 6, 1940
Social Security No. 370-10-2623

	A.M. In	Noon Out	Noon In	Night Out	Company Time	Actual Time Worked
Wed.	6:48	12:05	12:48	4:31	8½	9 hours min.
Thurs.	6:48	12:05	12:48	4:23	8¼	8 hours, 52 min.
Fri.	6:48	12:05	12:48	4:52	8¾	9 hours, 21 min.
Mon.	6:48	12:05	12:48	4:18	8¼	8 hours, 47 min.
Tues.	6:48	12:04	12:48	4:17	8¼	8 hours, 45 min.
Wed.	6:48	12:05	12:47	4:28	8¼	8 hours, 58 min.
Thurs.	6:48	12:04	12:48	4:17	8¼	8 hours, 45 min.
Fri.	6:48	12:05	1:02	4:42	8¼	9 hours, 1 min.
Mon.	6:48	12:05	12:48	4:33	8½	9 hours, 2 min.
Tues.	6:48	12:05	12:48	4:34	8½	9 hours, 3 min.
			Total		83¾	89 hours, 34 min.

ul Starkey—Payroll No. 258—Ending Feb. 27, 1940
Social Security No. 370-09-9907

	A.M. In	Noon Out	Noon In	Night Out	Company Time	Actual Time Worked	Extra Time In	Extra Time Out
d.			2:33	7:03	6¾	7 hours, 15 min.	7:20	10:05
urs.			2:31	7:02	7¼	7 hours, 42 min.	7:24	10:35
			2:37	6:55	6½	7 hours, 50 min.	7:33	10:05
n.	5:52	10:28	10:53	2:50	8¼	8 hours, 33 min.		
es.	5:55	10:32	10:54	2:44	8	8 hours, 27 min.		
d.	5:51	10:32	10:56	1:29	6¾	7 hours, 15 min.		
urs.	5:51	10:30	10:56	2:44	8	8 hours, 27 min.		
	5:53	10:32	10:57	2:12	7½	7 hours, 54 min.		
n.			1:18	6:59	8¾	9 hours, 18 min.	7:25	11:02
es.			2:35	7:04	7¼	7 hours, 44 min.	7:24	10:39
			Total		75	80 hours, 25 min.		

(B) The company erroneously computes the time worked by the employees so that they will work exactly the statutory number of hours and not have to pay overtime. This practice is true in the cases of all employees whose names appear on Exhibits A and B of the Bill of Particulars and the Amendment to the Bill of Particulars, but there is set forth hereinafter specific instances thereof, which examples are true of all other employees of said Mt. Clemens Pottery Company.

Dorothy May, for period ending February 11, 1941, is given credit for working a total of 80 hours during the two-week period. To accomplish this, the company computes her working time as 8 hours on each day of said period, although she checks in at 7:10 in the morning, out at 11:55, returns at 12:35, and quits work at 4:25 P.M. The time actually worked amounts to 8 hours and 35 minutes. Again for the two-week period ending January 28, 1941, Dorothy May is credited by the company with working only 80 hours, whereas she checked in at 7:04

in the morning, out at 11:56 noon, returned from lunch at 12:35 and quit work at 4:27, or an actual working time of 8 hours 44 minutes. The company, however, in each case credited her with working only 8 hours a day, in order that said company would not be required to pay overtime beyond the statutory limits, as set forth in the Complaint herein. While the statutory time, wherein the company would not have to pay overtime, was fixed by the Fair Labor Standards Act at 42 hours per week, the company's computation for a two-week period showed that Dorothy May worked 84 hours. For the two 2-week periods ending October 1 and October 15, 1940, the company credited her with working 8½ hours per day, when she worked in excess of 9 hours per day. For instance, she checked in at 7:04, checked out for lunch at 11:07, returned at 11:51, and quit work at 4:55, so that her actual working time was 9 hours and 7 minutes, but the company credited her and paid her only for 8½ hours. Again, for the two-week period ending October 11, 1940, the company credited her with working 84 hours. She was credited with working 8½ hours on the day when she reported in at 7:05, out at 11:55, returned from lunch at 12:34, and worked until 4:54 P.M. Her actual working time was 9 hours and 12 minutes.

Again, the time card of Leo Stafford for the period ending September 3, 1940, showed that the company credited him with working only 84 hours. He reported in at 6:31, out at 12:32. His actual working time was 6 hours and 1 minute, but the company credits him with only 5¾ hours. Again, he checked in at 6:50, worked until 11:41, returned from lunch at 12:34, and quit work at 4:22 P.M. The company credits him with having worked 8 hours, whereas his actual working time was 9 hours and 39 minutes. When the statutory time was 40 hours, Leo Stafford was given credit for working 80 hours in two weeks. For instance, in the period ending February 11, 1941, he reported in at 6:53, out at 11:51, returned from lunch at 12:36, and quit work at 4:10, or

an actual working time of 8 hours and 32 minutes, whereas the company credited him with having worked but 8 hours.

The examples set forth herein are typical of the erroneous computations made for all of the employees whose names appear on Exhibits A and B of the Bill of Particulars, and the Amendment to the Bill of Particulars.

(C) The Mt. Clemens Pottery Company did not accurately compute the time of employees worked in other cases than as set forth above where deductions of as much as 56 minutes were made by crediting the employee only with time worked from the succeeding quarter-hour. An example of the company's computation is revealed in cases similar to that of Leo Stafford for the period ending January 9, 1940. On Friday, he checked in at 6:51 and out at 11:51. He returned to work at 12:50, and stopped work at 4:49. The actual time worked is 9 hours, but the company computes the time at 8½ hours. On Thursday of the same week he checked in at 6:45, out at 11:51, returned from lunch at 12:51, and quit at 3:28, or a total of 7 hours and 39 minutes, but the company gives him credit for only 7 hours. Again Leo Stafford, for the period ending April 22, 1941, is credited by the company as having worked 4¾ hours on the day when he checked in at 6:50 and out at 11:53. He returned from lunch at 12:52 and the company records do not reveal the length of time which he worked that day. Harry Lozen checks in at 8:49 in the morning and worked until 11:42 A.M. He checked back from lunch at 12:33, and the time card does not reveal the length of time he worked in the afternoon, but the employee, Harry Lozen, is credited with having worked only 2½ hours on said date.

(D) The company erroneously computes the time of the employees and gives them credit for time worked only when they are doing piece work. All employees are re-

quired to do what is known as "charity work," such as setting up the machines for themselves and other employees, which operations take between three and eight hours, and no pay therefor is made, even though said employees are performing work for said Mt. Clemens Pottery Company. For instance, all of the employees in the Slip Room are required to work from two to three hours on Friday night cleaning up in said department and are not paid therefor. This work is performed by Walter Thoel and all other employees of said Slip Room.

Again, Paul Starkey and all other employees have been required to oil molds, and this operation requires work for periods of four to eight hours a day once a week, but no payment is made therefor to any of said employees.

(E) The Mt. Clemens Pottery Company makes certain unauthorized deductions from the wages of the employees whose names appear on Exhibits A and B of the Bill of Particulars and the Amendment to the Bill of Particulars (and from the wages of all other employees) for equipment used by said company. For instance, the buggies used by the company in transporting pottery products from one department to another are charged to the employees. Said deductions also include sponges, gloves and other equipment used by the company and its employees.

(F) The Mt. Clemens Pottery Company, through the process set forth in paragraph (A) above, had its foremen punch the time clock of employees in a manner to show that they took time out for lunch, whereas, in truth and in fact, said employees were not permitted to take time out for lunch until on and after April 1, 1940. For instance, the time card of the employee, Harold Pearl, shows that for the periods ending November 19, 1940, December 17, 1940, and December 31, 1940, he was charged with having one-half hour out for lunch. This was accom-

plished by The Mt. Clemens Pottery Company through the expedient of having the foremen punch the time clock out at 12:29 noon, and punch the time clock in at 12:31, so that the employee was deducted for one-half hour for a lunch period, whereas, in truth and in fact, said employee, as well as other employees whose names appear on Exhibits A and B hereof, was required to work without said lunch period. Other employees, including Dick Hotchkiss, Harold Pearl, Floyd Pearl and others whose names appear on Exhibits A and B hereof, had their time cards punched "out" at 3:29 and "in" at 3:31, and thus said Mt. Clemens Pottery Company was able to deduct one-half hour from the working time of said employees.

(G) The foremen of The Mt. Clemens Pottery Company punch the time cards so that employees were represented as having quit work, although they were required to continue after the time shown on said time card.

(H) The Mt. Clemens Pottery Company does not pay overtime, either on the base rate or piece work rate of the employees whose names appear on Exhibits A and B of the Bill of Particulars and the Amendment to the Bill of Particulars. This is true of all employees, but examples are set forth herein which are typical of the method of paying all employees. Clarence Burgess, for the week ending May 14, 1940, worked 53½ hours at 86 cents an hour and received straight time only, or $45.80. Paul Starkey worked for the period ending December 16, 1938, 108½ hours at 70 cents an hour and received therefor the sum of $75.83. Clarence Burgess for the two-week period ending July 11, 1939, worked 91 hours at $1.03 per hour, and was paid therefor the sum of $93.69. For the period ending October 3, 1939, Clarence Burgess worked 88½ hours at the rate of $1.08 per hour and received therefor $95.16. For the period ending March 7, 1939, Clarence Burgess worked 89 hours at $1.12 per hour and

got $99.68. No payments were made to said employee or others at the rate of time and one-half for the hours worked in excess of the statutory periods set forth in the Fair Labor Standards Act of 1938. Clarence Burgess, for the week ending April 16, 1940, worked 48 hours at 75 cents an hour. He and the other twenty men in the dipping department were paid at the rate of straight time for each of said 48 hours. Harold Chaltron for the period ending December 16, 1938, worked 104½ hours at the rate of $1.00 per hour, and was paid therefor the sum of $104.67. No payment was made for overtime. Leo Stafford, for the period ending December 11, 1938, worked within a 7-day work period 77¼ hours and was paid therefor at straight time only. Walter Nofsinger and Martin Miller both worked for the two-week period ending July 30, 1940, a total of 83½ hours and received pay at the rate of 99½ cents per hour, or a total of $82.66. No credit was paid therefor for the hours worked in excess of the statutory limits aforesaid.

(I) The Mt. Clemens Pottery Company makes deductions from the wages of employees for the services of so-called "invisible men." In other words, employees who work in a group, and are paid on a job piece work system, have deducted therefrom the pay of persons who allegedly helped on said jobs or who allegedly maintain the machinery in connection therewith. Thus, where Harold Pearl and T. Hotchkiss, for the period ending August 5, 1941, each worked 70 hours at $1.03 per hour, they had deducted from their wages the pay for a third person in the amount of $2.10 for 3½ hours of maintenance work allegedly performed by some third person at 60 cents per hour.

(J) The Mt. Clemens Pottery Company, through its agents, had the time cards of the employees improperly marked. For instance, all the time cards for the employees numbered 941 to 956, inclusive, for the periods

ending April 2, 1940, April 9, 1940, November 12, 1940 and November 19, 1940, all indicate that the starting time is exactly 6:46 A.M., and that the employees all left at 12:03, returned at 12:48, and quit work at 4:22. Again, the employees' time cards indicate a strange uniformity. For instance, the time card of Dorothy Gaffke, Social Security No. 383-01-3696, for every day of the two-week period ending November 12, 1940, indicates that she started work at exactly 6:51 A.M. each day, went out at exactly 11:59, returned from lunch at exactly 12:50, and quit work at exactly 4:08.

While plaintiffs contend that they have not been paid properly, even on the basis of the company's own time cards, we will contend at the hearing that certain practices, as outlined above, were followed by the company in order to prevent the plaintiffs receiving minimum wages and the overtime compensation to which they were entitled, as set forth aforesaid.

The foregoing, together with "Exhibit A," constitutes a list of those employees who claim minimum wage compensation, and also the names of those employees who claim greater hours worked than those shown on the time cards. The foregoing constitutes the nature of the claims upon which said plaintiffs assert that the hours worked and the wages paid by defendant, Mt. Clemens Pottery Company, were erroneously computed. Said Mt. Clemens Pottery Company has not paid any of its employees whose names appear on said Exhibits A or B contained in the Bill of Particulars and the Amendment to the Bill of Particulars herein for the actual time worked, nor for overtime.

Respectfully submitted,

Edward Lamb,
Counsel for Plaintiffs.

EXHIBIT B

The following employees of The Mt. Clemens Pottery Company claim greater hours worked than those shown on the time cards of The Mt. Clemens Pottery Company, and each has unpaid overtime compensation owing him. Those employees who have an asterisk (*) marked after their names also claim unpaid minimum wage compensation.

Ahlen, Dorothy*
Alband, W.
Anderson, Steve
Apfel, Helen*
Aschke, Walter

Baade, Stella*
Bahreski, Elinor*
Barg, Raymond
Bartle, Eileen*
Baxter, Arthur
Beach, Beatrice*
Bedlawski, Helen*
Bell, Violette*
Bingle, Sherman
Bliemeister, Howard
Boeling, Barbara*
Botkins, Merle
Bousson, Julia*
Boyer, Gertrude*
Brede, Berniece*
Brede, Evelyn Mae*
Brondt, Walter
Browne, James
Bruder, Molly*
Bruder, Ruth*
Brussian, Joyce*
Burgess, Clarence

Campau, Elizabeth*
Campbell, Margaret Green*
Chattron, Harold
Clay, Wells
Collin, Louis
Collins, Shirley*
Conners, Emerson
Contri, Ella*
Copeland, Curtis
Cottrell, Claude
Crewe, Susie*
Crombes, Evelyn*
Cronk, Louise*
Cross, Gertrude*
Cumeralto, Martha*

Dacko, Nick
Dailneautf, Arthur
Daniels, Helen*
Daniels, Robert
DeBussehere, Leora*
DeKieve, Lia*
DeSchepper, Leo
Dekiere, Margaret*

Denisink, Olga*
Duboy, Clair
Dupont, Marcel*

Eckert, Arthur
Ehrle, George
Elgert, Elsie*
Engelbrecht, Marjory*
Eowhy, Mary*
Eschenburg, Edna*

Felong, John
Fetty, Marion*
Fobbe, Pauliene*
Fox, Shirley*
Frazho, Paul
Freddle, Eva*

Glonoes, Ernest
Godin, Frances*
Goffke, Dorothy*
Gohl, Hilda*
Goldenbogen, Agnes*
Goldenbogen, Lavina*
Goldenberger, Marvin
Gombert, Robert
Gooley, Ruth*
Goreia, Pat
Gottschalk, Ruth*
Graham, Elsie*
Gutt, Helen*

Haare, Floyd
Harms, Emma*
Harms, Gladys*
Harms, Viola*
Haus, Helen*
Hawcroft, Samuel
Heisner, Andrew
Hicks, Elmira*
Hicks, Robert
Hildinger, Bertha*
Hildinger, Evelyn*
Hotchkiss, Gerald
Hourtienne, Esther*
Houthoofd, George
Houthoofd, Gerome
Hoy, Olive*

Jackman, Louise*
Jackson, Bob
Jackson, Lorraine*
Jackson, Ruth*
Jakubiak, Wanda*
Jankowski, Kourt
Jorgensen, Kenneth
Jurek, Stella*

Kaiser, Paul
Kandt, David
Kandt, Marian*
Kanekowski, Marie*
Kanten, Henry
Kempff, Dorothy*
Kenney, Edith*
Kethe, Norma*
Kleinhaus, Florence*
Kotzke, LaVerne*
Krohn, Virginia*
Kudla, Antoinette*
Kudla, Julia*
Kukuk, Martin
Kulman, Katherine*
Kuzdzol, Helen*

LaForest, Ethel Socia*
Larimer, Earl
Liebzeit, George
Liebzeit, Clarence

Logghe, Margaret*
Lozon, Harry
Lozon, Martha*
Luchtman, Nelson
Ludeman, Louis
Luenknegt, Marie*
Lulay, Virginia*

Mallast, Jennie*
Manchik, Agnes*
Marleau, Elizabeth*
Masters, Clayton
Masters, Earl C.
May, Catherine*
May, Dorothy*
May, Harry
Mayobb, Twila*
McVicar, Donald
Meier, Albert
Metz, John
Meyers, Viola*
Miller, Lawrence
Miller, Marie*
Miller, Theodore

Neal, Olga*
Nicka, Carl
Nicks, Edna*
Noe, Esther*

Olewnicki, Geneive*
Olewnicki, Janet*
Osborne, James D.
Osterman, Katherine*

Pabo, Chester
Parrott, Ruth*
Pearl, Floyd
Pearl, Fred V.
Pearl, Harold
Pearl, Marie*
Persinger, Thomas
Peters, Martha*
Petrucc, Anthony
Phillips, Dutch
Phillips, Mary*
Pierzina, Eva*
Poleniewicz, Alfred
Pretzer, Arthur
Pretzer, Lucille*

Rachow, John
Rauschelback, Adelia*
Redlowski, Wilma*
Reeder, Stanley
Reeder, Wesley
Rettig, Ann*
Richard, Elaine*
Ritter, John
Rohrbeck, Luella*
Rondo, Ruth*
Rozanski, Mary*

Sabatiri, Rita*
Sahr, Emma Elgert*
Sahrow, Elmer
Sawicki, Mary*
Scheible, Edna*
Scheible, Mary*
Schiappocasse, Albert
Schluessler, Marion*
Schoof, Carl
Schramm, Beatrice*
Schroeder, George E.
Schroeder, Leona*
Schroeder, Shirley*
Schuetzler, Florence*
Schulte, Rita*
Schuster, Josephine*

Schwartz, Clarence
Selk, Walter
Sibbe, Arthur
Sievert, Carl
Smith, Preston
Snyder, Kay*
Socia, Lillian*
Sonntag, Esther*
Sopha, Bernhardt
Sopha, Esther*
Spicer, Verlon
Stafford, Glen
Stafford, Leo A.
Stanke, Alma*
Stark, B.
Starkey, Ilene*
Starkey, Paul
Suer, Edwin E.
Suttors, Frank

Teasmer, Tom
Tehl, Adam
Teise, Elsie*
Tewksbury, Jean*
Tholl, Louis
Tholl, Walter
Thomas, Albert
Thurman, Louis
Thurman, Viola*
Topikor, Elizabeth*
Trombley, Earl
Trombley, Ray

Uhlrich, Eleanora Nicka*
Ulman, Emerson

Van Rosenberg, Mable*
Vertin, Kathryn*

Watkins, Albert
Watkins, Francis*
Weier, Delia*
Weier, Edien
Weiner, Dorothy*
Weiner, John
Wendt, William
Wilder, Robert
Wolzinge, Walter

Yochum, Margaret*
Young, Burnetta*

Zaberuka, Kinnie
Zieman, Lorraine*
Zieman, Margaret*
Zienert, Mildred*
Zyshski, Leona*

MOTION FOR JUDGMENT AND FOR APPOINTMENT OF SPECIAL MASTER

(Filed Dec. 2, 1941)

Now comes the plaintiffs by Edward Lamb, their attorney, and moves (1) that judgment be granted plaintiffs herein because of the failure of the defendant, The Mt. Clemens Pottery Company, to comply with the order of this Court heretofore entered as to the answering of the interrogatories attached to the complaint herein, and (2) that the Court appoint a Special Master to compute the sums owing each of said plaintiffs herein, and (3) that the Court make such further orders as it deems just.

This Motion is based upon the provisions of the Rules of Civil Procedure and more particularly upon Rule 37(d) providing "that where a party failed to answer interrogatories submitted under Rule 33, the Court on motion and notice may * * * enter a judgment by default against that party.

Plaintiffs to support said motion for judgment herein state the following facts and circumstances:

(A) On May 2, 1941, defendant, The Mt. Clemens Pottery Company, filed extensive objections to the interrogatories attached to plaintiffs' complaint. Copy of these interrogatories had theretofore, to-wit: on April 22, 1941, been served on the defendant, The Mt. Clemens Pottery Company. On May 12, 1941, the question of the propriety of these interrogatories was argued before the Honorable Frank A. Picard, Judge of the United States District Court for the Eastern District of Michigan,

Southern Division. Thereafter, to-wit: On or about June 13, 1941, the objections of the defendant; The Mt. Clemens Pottery Company, to the interrogatories as aforesaid were denied by the Honorable Frank A. Picard, United States District Judge. No answer to the interrogatories have been filed and no effort expended by the defendant, The Mt. Clemens Pottery Company, to comply with the orders of this Court heretofore entered as aforesaid.

The plaintiffs state that in accordance with said order of June 13, 1941, a Bill of Particulars has been furnished the defendant setting forth the information called for in said order. Thereafter, to-wit: On October 31, 1941, defendant, The Mt. Clemens Pottery Company, filed a request for further particulars and on November 10, 1941, the Court found that the list required of those employees who seek overtime had theretofore been furnished. The Court in said order of November 10, 1941, also required plaintiffs to furnish the names of those employees who claimed minimum wage compensation and also the names of the employees who claimed greater hours worked than those shown on the time cards. In accordance with said order, plaintiffs filed an Amendment to the Bill of Particulars on November 26, 1941, setting forth said information.

(B) Plaintiffs state that they diligently examined the records which were made available by the defendant company and have furnished all information required under the orders of the Court herein but that defendants have failed to answer the interrogatories attached to the complaint served upon the defendants on or about April 22, 1941. That in accordance with the rules of this Court, as more fully set forth above, plaintiffs respectfully ask that judgment by default be entered against the defendant, The Mt. Clemens Pottery Company.

(C) Plaintiffs state that in the event judgment is entered against the defendant, The Mt. Clemens Pottery

Company, in accordance with the prayer aforesaid, that various sums of money will be owing by the Mt. Clemens Pottery Company to each of the plaintiffs represented herein and request is therefore made that a Special Master be appointed to represent the Court herein and to compute the amounts owing each of said parties.

Plaintiffs state that there are in excess of 260 employees who have monies accruing to them as aforesaid and that an accountant or other persons qualified to compute said sums would assist in making the tabulations required.

In the event that judgment by default is not granted plaintiffs herein, that a Special Master, qualified to make the computations herein, would save the Court extensive labor, expedite the examinations required and bring about a speedier termination of the issues herein.

Wherefore, plaintiffs move for judgment herein in accordance with the rules of Civil Procedure as outlined above and that a Special Master be appointed herein to compute the sums owing each of the parties represented by plaintiffs herein.

Edward Lamb,
Attorney for Plaintiffs,
1014 Edison Building,
Toledo, Ohio.

MOTION OF DEFENDANT MT. CLEMENS POTTERY COMPANY TO STRIKE OR FOR FURTHER PARTICULARS

(Filed December 6, 1941)

Comes now Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by its attorneys, and moves the court for the granting of certain orders relating to the pleadings herein, in the particulars hereinafter specified, and as summarized on the concluding page of this motion.

I. PARTICULARS AS TO CLAIM THAT SUB-MINIMUM WAGES WERE PAID.

This defendant moves that plaintiffs be required to furnish further particulars as to their claim that certain of the plaintiffs received sub-minimum wages; and that, if such particulars be not furnished within the time specified by the Court, this claim be stricken from plaintiffs' pleadings. In this connection, defendant shows unto the Court as follows:

1. In the complaint, it was charged (paragraph 6) that

> "certain of defendant's employees in whose behalf this action is brought by plaintiffs herein did not, either on a piece work or upon an hourly rate computation, earn the minimum wage of 30c an hour."

2. This Court's order of June 13, 1941, provided, in part:

> "Plaintiffs are therefore ordered to prepare a bill of particulars showing * * * whom they claim fall

within each specific division, such as * * * 'sub-minimum' wages."

3. After counsel for plaintiffs had examined the defendant's books and records (pursuant to the Court's order of June 13th which provided that in lieu of answering certain interrogatories addressed to the defendant concerning hours worked and wages paid to all its employees, defendant should produce for plaintiffs' examination defendant's records as to the hours worked and wages paid to those employees only who designated plaintiffs as their representatives), a bill of particulars was served on defendant October 23, 1941, in which it was stated—

> "Plaintiffs on information and belief allege the fact to be that female employees listed in said Exhibit 'A'" (comprising a list of all those represented in this action) "received 'sub-minimum' wages."

4. On the hearing of defendant's motion for further particulars as to this, counsel for plaintiffs stated in open court on November 10, 1941, that the claim for sub-minimum wages would be waived; but when a proposed order was submitted for entry, counsel for plaintiffs stated he was not authorized to waive this claim, and thereupon it was provided in this Court's order of November 10, 1941, "Plaintiffs shall furnish the names of employees who claim minimum wage compensation."

5. After further examination of defendant's records, plaintiffs on November 27, 1941, served on defendant an amendment to the bill of particulars. In this document it is averred that each woman employee represented by plaintiffs claims minimum wage compensation.

6. The records of this defendant, examined by plaintiffs' counsel, clearly show that all employees except be-

ginners received wages substantially above the minimum, and that all beginners received at least the minimum, and that nearly all the women employees earned wages far above the minimum provided by law.

7. The said bill of particulars and the amendment thereto constitute a plain evasion of this Court's order. They purport to designate as earning less than 30¢ an hour women employees who earned forty to sixty cents an hour, or upwards. However, no particulars are given in support of the preposterous theory that women earning fifty or sixty cents an hour are entitled to damages because of a hypothetical failure to earn thirty cents an hour. Unless such particulars are furnished, this claim should be stricken.

II. PARTICULARS AS TO CLAIM THAT LONGER HOURS WERE WORKED THAN SHOWN ON CLOCK CARDS.

This defendant moves that plaintiffs be required to furnish further particulars of their new claim, presented for the first time in the amendment to the bill of particulars, that all the employees represented by plaintiffs worked longer hours than shown on their time clock cards; and that if such particulars be not furnished within the time ordered by the Court, such claim be stricken from plaintiffs' pleadings. In this connection, defendant shows unto the Court:

1. In the complaint herein, it was charged (paragraph 7) that certain employees were defrauded through the use of "doctored" time clocks which did not correctly register the time at which they were punched, and that such employees started work earlier and quit later than the time shown on their clock cards, the complaint averring that:

"employees work 14 minutes in advance of the time shown on the time clocks in the morning of each working day. That the time clocks maintained by the defendant company indicate that the employees stop working for a lunch period at 11:45 A.M., whereas in truth and in fact each employee of the defendant herein is required to continue working until 11:55 A.M. That thereafter the time clock indicates that each employee of the defendant company herein resumes work at 12:45 P.M., whereas in truth and in fact each employee of the defendant company herein resumes work at 12:31 P.M. That the time clocks maintained by the defendant company indicate that the employees stop work in the afternoon at 4:15 P.M., whereas in truth and in fact each employee of the defendant works until 4:30 P.M."

2. After an examination of defendant's records disclosed the incorrectness of this charge, plaintiffs failed to specify in their bill of particulars the names of any individuals claimed to fall within this category, despite the requirements of this Court's order of June 13, 1941.

3. At the hearing on defendant's motion for further particulars on November 10, 1941, it was stated in the course of the arguments that plaintiffs' claims were based on the defendant's clock card records as to hours worked, but this concession was later withdrawn and accordingly, it was provided in this Court's order of November 10, 1941, that plaintiffs should furnish the names of those employees who claimed they worked greater hours than those shown on the time cards.

4. In the amendment to the bill of particulars served on defendant November 27, 1941, it is claimed for the first time that all employees represented by plaintiffs

worked longer hours than shown on their time cards. This is not a particularization of the original claim that the time clocks were "doctored" so as to show incorrectly identical starting and stopping times for all employees. Rather, after an examination of the defendant's records demonstrated the incorrectness of this original claim, it has been abandoned, and there is substituted in lieu thereof a new and exceedingly vague charge that all the employees represented herein worked greater hours than shown on their time cards. It is not averred, however, how much extra time is claimed, or when it accrued, or how it is to be measured, nor are any particulars given as to the nature of this claim. This defendant shows that information as to such particulars will be required to enable defendant properly to prepare its responsive pleading and to prepare for trial, and moves that unless such particulars be furnished, this claim be stricken.

III. PARTICULARS AS TO OTHER NEW CLAIMS.

This defendant further moves that plaintiffs be required to furnish particulars as to the nature of the following new claims, which are set forth in the amendment to the bill of particulars, but without proper particularity as to the names of the employees on whose behalf the claims are made, nor as to the real nature of the claims, nor when they accrued, nor how much is involved:

1. The general claim is made that plaintiffs were required to perform certain uncompensated tasks, such as oiling machinery; but no particulars are given concerning this claim, nor is it averred whether or not plaintiffs claim that such work was done outside of the hours recorded on the clock cards, and defendant cannot properly

prepare its defense without knowing the nature of plaintiffs' claims in these particulars.

2. The general claim is presented that the defendant made certain unauthorized deductions from the wages of plaintiffs, or some of them, again without particularizing whether or not they claim any other deductions than those which are duly reflected on the defendant's records, examined by plaintiffs; and without particulars as to whether they claim that the deductions were not in fact assented to by employees or that the employees could not lawfully assent to an arrangement whereby gloves and similar articles purchased by the employees through the company would be paid for by deductions from their gross pay. The bill of particulars avers that deductions were made for hand trucks used by the employees, a claim which defendant charges to be malicious and untrue and which is not supported by defendant's records; and defendant avers that if plaintiffs in fact intend to press any such charges they should be particularized.

3. Another vague charge is made that where a group of two or more employees were paid on a group piece work basis, deductions were made from the group's piece work earnings to pay wages of third persons claimed to have helped on the job. The impropriety of this does not appear. If particulars as to time and names are given, defendant can establish by its records what third person helped on the job, and what part of the group's total earnings, if any, were paid to him; but without such particulars defendant can have no knowledge of what real claim, if any, is made in this connection.

4. Similarly, particulars should be given as to the names of the employees whose foremen are alleged to have punched out their clock cards before the employees quit work, and when these instances are claimed to have occurred.

IV. VAGUENESS OF AMENDED BILL OF PARTICULARS.

This defendant avers that there is involved herein only one real claim, i.e., a claim that certain employees performed work for intervals ranging from one to fourteen minutes between the established starting or stopping time and the time when the employees punched the time clock, and that these intervals were not included in the company's computation of hours worked, and that if included in such computation the result would be in certain cases to increase the employee's total hours during a week so as to come within the bracket where it is claimed time and a half must be paid (the number of hours worked by piece-rate employees herein becoming important, if at all, only where overtime is involved). As to this claim, well defined issues of fact and law will be presented by defendant's answer. As to the additional vague charges made by hints and innuendo in plaintiffs' complaint, bill of particulars, and amended bill of particulars, defendant respectfully submits that the obscurity is purposeful, and that a requirement of further particulars will, by forcing a definite statement as to these claims, properly narrow the issues and conserve the Court's time, and enable defendant properly to prepare for trial. In this connection defendant shows unto the Court:

1. Subdivision II A of the Amendment to the Bill of Particulars charges that time worked should be computed from the precise moment the employee entered the plant and punched the time clock, whether or not he then began work, and charges that defendant erred in computing hours worked without counting all of these odd minutes. However, in 5 of the 6 examples given, the figure stated as claimed "actual time worked" is in excess

of the total elapsed time shown on the clock cards, although this is the basis plaintiffs purport to adopt. There is no explanation of the basis for computing the claimed "actual time worked." This defendant moves for particulars as to this.

Further, out of four examples showing claimed "actual time worked" for a period of two weeks, there are two cases where even the claimed "actual time worked" does not involve overtime. So long, at least, as the claimed hours worked are not in the overtime bracket, the precise number of hours worked is immaterial, where, as here, employees are paid piece rates. Defendant therefore moves for a more definite statement as to what plaintiffs claim for this.

2. Subdivision II F of the Amendment to the Bill of Particulars avers that employees were charged with taking 30 minutes time off for lunch when in fact they did not do so; but the particular instances alleged are not supported, as plaintiffs claim, by the defendant's records. On the contrary, the records referred to (which have been examined by plaintiffs' counsel) do not support the claim. Plainly, the nature of this claim should be particularized.

3. Subdivision II H of the Amendment to the Bill of Particulars alleges that in certain instances employees were paid straight time for overtime work. Certain instances are pointed out, involving, however, employees paid at piece rates and not at hourly rates. Further, two instances are given of alleged overtime hours worked in a work week, whereas, in fact, as shown by defendant's records, the hours were spread over a longer period; two instances are given as to hours worked in a "period," which as shown by defendant's records involved two full work weeks and part of a third, so that the total as given

is insignificant; and two instances are given of hours worked in a "period" which is shown by defendant's records to be a two week period, with no overtime in either week.

4. Subdivision II J makes allegations as to the uniformity of recordings on certain clock cards. However, the cards do not in fact contain the figures which it is said they contain. Further, there is no statement of any kind on which it is possible for the defendants to learn what, if anything, is claimed on the basis of the assertion that certain employees punched the time clocks at approximately the same time on successive days.

5. Similar inconsistencies occur in other paragraphs of the Amendment to the Bill of Particulars, as more fully will appear upon examination thereof.

V. PRIOR ORDER NOT COMPLIED WITH.

Although this Court's order of June 13, 1941 required the plaintiffs to list the individuals claimed to fall within each of the specific divisions set up in the complaint, nevertheless plaintiffs have not, either in their Bill of Particulars or in the amendment thereto, specified any individuals claimed to fall within the following classifications:

1. Employees from whose pay the defendant is claimed to have deducted the sum of 10% (Paragraph 6).

2. Employees claimed to have been shifted from one job to another at a continuation of a "beginner's rate of pay" (Paragraph 6).

3. Employees signing blank vouchers claimed to have been subsequently filled in to show hours worked and wages paid (Paragraph 8).

4. Employees claimed to have worked 45 hours each week without extra compensation for overtime hours (Paragraph 4 and 5).

5. Employees claimed to have been required to punch time clocks which did not correctly register the time at which they were punched.

VI. SUMMARY.

Wherefore, this defendant moves the Court as follows:

1. That plaintiffs be required to give further particulars as to the claim for sub-minimum wages, in view of the fact that no basis whatever is suggested for the claim that women employees earning 40¢ to 60¢ an hour or upwards are claimed to have earned less than 30¢ an hour; and that if such particulars be not furnished, this claim be stricken.

2. That plaintiffs be required to furnish further particulars of their new claim that they worked longer hours than shown on their time clock cards, in view of the fact that nothing whatever is stated as to the real nature of this claim, or as to how much extra time is claimed, or on what basis it is to be computed; and that if such particulars be not furnished, this claim be stricken.

3. That plaintiffs be required to furnish particulars as to the nature of the following new claims set up in the amendment to the Bill of Particulars, specifying in each case the names of the individuals claimed to be involved, and the basis of the claims: (a) that certain uncompensated work was performed; (b) that unauthorized deductions were made from wages; (c) that group piece-work

earnings were improperly allocated; (d) that foremen improperly punched certain employees' clock cards. And defendant moves that if such particulars be not furnished, this claim be stricken.

4. That plaintiffs be required to particularize and explain the self-contradictory and patently erroneous statements set forth in the amendment to the bill of particulars, in the respects hereinabove specified; and that if this be not done, the amended Bill of Particulars be stricken as being impertinent, immaterial, and scandalous.

5. That there be stricken those allegations of the complaint, as hereinabove specified, as to which this Court's prior order requiring the furnishing of particulars has not been complied with.

6. That this defendant may have such other and further relief as the Court deems proper.

This motion is based on the files and records of this case, and on the court rules in such case made and provided.

Beaumont, Smith & Harris,
Albert E. Meder,
Frank E. Cooper,
Attorneys for Defendant,
Mt. Clemens Pottery Company,
2900 Union Guardian Building,
Detroit, Michigan.

December 6, 1941.

ANSWER OF MT. CLEMENS POTTERY COMPANY TO MOTION FOR JUDGMENT AND FOR APPOINTMENT OF SPECIAL MASTER

(Filed Dec. 12, 1941)

Now comes the Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by Beaumont, Smith & Harris, its attorneys, and in answer to the motion heretofore filed by plaintiffs herein seeking entry of a judgment in favor of the plaintiffs and seeking the appointment of a Special Master to compute the sums owing to plaintiffs, shows unto the Court as follows:

A. Answering Paragraph A of said motion, this defendant refers to the files and records of this Court as to the dates of service of the pleadings herein and as to the dates of hearings. This defendant denies that on or about June 13, 1941, the objections of this defendant to the interrogatories were denied, and shows that, on the contrary, said objections were sustained, and that the order of June 13 provided that in lieu of answering the said so-called "interrogatories" this defendant should produce certain records (showing a part, but not all, of the information requested in said interrogatories) and permit inspection by plaintiffs of those records specified in the Court's order; and this defendant has complied fully with this order. Further answering, this defendant denies that the Bill of Particulars filed by plaintiffs sets forth the information called for in said order of June 13, 1941, and denies that the plaintiffs' amendment to the Bill of Particulars sets forth the information called for in the Court's order of November 10, requiring the furnishing of further particulars.

B. Answering Paragraph B, this defendant denies that plaintiffs diligently examined the records showing hours worked and wages paid employees claimed to be represented by plaintiffs; and denies that plaintiffs have furnished the information required under the orders of the Court herein; and denies that this defendant has failed in any respect to comply with the orders of the Court.

C. Answering Paragraph C, this defendant denies that any sums of money are owing to any of this defendant's employees herein and denies that an accountant could assist the Court. This defendant denies that a Special Master would save the Court extensive labor or expedite the examinations required or bring about a speedier determination of the issues. On the contrary, this defendant shows that at least until issues are framed through the filing of an answer and affirmative defenses by this defendant and through the Court's ruling thereon, appointment of any special master would be unwarranted by any rule of Court and would serve only to delay and hinder a proper framing of the issues herein.

Beaumont, Smith & Harris,
Albert E. Meder,
Frank E. Cooper,
Attorneys for Defendant,
Mt. Clemens Pottery Company,
2900 Union Guardian Building,
Detroit, Michigan.

December 12, 1941.

AFFIDAVIT

State of Michigan,
County of Macomb—ss.

CHARLES E. DOLL, being first duly sworn, deposes and says that he is a resident of the City of Mt. Clemens, Macomb County, Michigan, and is the Vice-President and General Manager of the Mt. Clemens Pottery Company, one of the defendants in the above entitled cause.

Deponent further says that the Mt. Clemens Pottery Company maintains three sets of records showing the hours worked and wages paid its employees, viz: (1) time clock cards showing the hour and minute that each employee registers his entrance to or exit from the plant and showing further the computation of the number of hours worked each day; (2) an intermediate posting record showing the weekly earnings of each employee for each bi-weekly pay period and showing the hours worked each week; (3) annual individual earnings records for each employee, duplicating a portion of the information contained in the above described records and showing the hours worked and wages earned by each employee during each pay period of a year. For further explanation, copies of typical records are attached hereto and marked "Exhibits A, B and C."

Deponent further says that prior to September 19, 1941, he caused to be placed in the offices of Beaumont, Smith & Harris, attorneys, at 2900 Union Guardian Building, Detroit, Michigan, and there made available for examination by plaintiffs' attorney all of the intermediate posting records showing the hours worked and the wages paid all employees of the Mt. Clemens Pottery Company (and particularly those represented in this action) for the period

from September 20, 1938, to April 1, 1941; and the annual earnings cards of said employees for the years 1938, 1939 and 1940; and the time clock cards of said employees for the period from November 14, 1939, to December 31, 1940, and that said records have so remained available at all times for plaintiffs' inspection.

Deponent further says that on or about November 18, 1941, request therefor having been made by plaintiffs' attorney, he caused to be likewise placed in the offices of Beaumont, Smith & Harris and made available for examination at any time the clock cards of said employees for the period of January 1-April 22, 1941, and also the intermediate posting records showing hours worked and wages paid for the period from April 1-April 22, 1941, and that said records have at all times remained so available for inspection by plaintiffs' representatives.

Deponent further says that the only records in existence pertaining to the hours worked and wages paid said employees from September, 1938, through April, 1941, and not so removed to Detroit for the convenience of plaintiffs' counsel are the individual earnings cards for the period subsequent to January 1, 1941. As to these records, deponent says that the information as to hours worked and wages earned contained therein is also found in the original records from which the data on these individual earnings cards are copied (which original records, as above set forth, have long since been and still are constantly available for plaintiffs' examination in Detroit). Deponent further says that the only reason these individual earnings cards have not been so placed with the other records in Detroit is that they are in current use in the offices of The Mt. Clemens Pottery Company. Deponent further says that he has offered to have these cards brought to Detroit on any Monday, Tuesday or Friday afternoon or any Saturday morning for inspection by plaintiffs' representatives (the cards being unavailable on

Wednesdays and Thursdays, inasmuch as on those days entries are made thereon) and that deponent had completed preparations for the delivery of these cards to Detroit for examination by plaintiffs' attorney on December 5, 1941, pursuant to an appointment which was, however, on December 4, 1941, cancelled by plaintiffs' attorney, and deponent further says that he remains ready and willing to produce these records (which duplicate the information on records already offered plaintiffs' attorney for examination) on any day when said cards are not in actual use in the posting machines in the offices of the Company.

Deponent further says that the time clock cards for the period prior to November 15, 1939, were destroyed in the regular course of business hitherto and long prior to the institution of this action but that the information as to hours worked and wages paid employees of The Mt. Clemens Pottery Company for the period from September, 1938, to the date of the filing of the complaint herein remains available in other records which have hitherto been supplied plaintiffs for their examination, as above set forth.

Deponent further says that he is advised by counsel and verily believes that The Mt. Clemens Pottery Company has fully and in all respects complied with the orders of this Court of June 13 and November 10, 1941.

Further deponent says not.

(sgd.) Chas. E. Doll.

Subscribed and sworn to before me
this 11th day of December, 1941.

Agnes E. Benbennick,
Notary Public, Macomb County, Mich.
My commission expires Feb. 21, 1943.

(Attached exhibits omitted from printed record.)

AFFIDAVIT

State of Michigan,
County of Wayne—ss.

JAMES I. MacKENZIE, being first duly sworn, deposes and says that he is employed by Price, Waterhouse & Co., certified public accountants, and that in their behalf he has for four years audited the books of The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, and is familiar with the records of said company showing hours worked and wages paid to its employees. Deponent further says he has been engaged by The Mt. Clemens Pottery Company to assist representatives of plaintiffs in the above action in their examination of the books and records of said company showing hours worked and wages paid to those employees who are represented in the above entitled action.

Deponent further says that at all periods subsequent to September 19, 1941, there have been constantly available for plaintiffs' inspection in Detroit, Michigan, the records of the Mt. Clemens Pottery Company showing hours worked and wages paid to its employees for all periods between September 20, 1938 and January 1, 1941. Deponent further says that at all times subsequent to November 18, 1941, there have likewise been available in Detroit the clock cards and intermediate posting records showing hours worked and wages paid said employees for the period from January 1 to April 22, 1941.

Deponent further says that he assisted one or more representatives of the plaintiffs in an examination of such books and records on the 19th, 22nd, 23rd, 24th and 26th days of September, 1941, according to entries in deponent's work records, and that on October 13 and October

14 he waited for plaintiffs' representatives to keep an engagement for further examination of such books and records, but that plaintiffs' representatives appeared on neither of said days. Deponent further says that the examination was renewed by plaintiffs' representatives on November 17, 18, 19 and 21.

Deponent further says that on November 22, 24, 25, 26, 27, 28 and 29 and on numerous days in December, deponent has sorted and arranged the records aforesaid pursuant to the request of plaintiffs' attorney and that said records remain available for further inspection.

Deponent further says that during the examination of the records made in September on the dates aforesaid, deponent found each particular record for which a request was made without loss of time.

Deponent further says that on November 17th and 18th, 1941, he segregated for the assistance of plaintiffs some 394 records as called for by plaintiffs' representatives, comprising 172 time clock cards, 197 entries in the intermediate posting books, and 25 annual earnings cards; and that at all times subsequent to November 18 there have been segregated and awaiting the inspection of plaintiffs a large number of records of the employees represented in the above entitled action, but the said records have remained unexamined by plaintiffs. Further deponent says not.

(sgd.) James I. MacKenzie.

Subscribed and sworn to before me
this 12th day of December, 1941.

(sgd.) Sophia S. Fillipps,
Notary Public, Wayne County, Mich.
My commission expires Oct. 1, 1945.

AFFIDAVIT

State of Michigan,
County of Wayne—ss.

FRANK E. COOPER, being first duly sworn, deposes and says that he is an attorney at law associated with Beaumont, Smith & Harris, attorneys for the defendant Mt. Clemens Pottery Company in the above entitled cause, and that deponent is particularly familiar with the proceedings had in said cause.

Deponent further states that a list of certain individuals claimed to be represented by plaintiffs herein was received by deponent on or about July 8, 1941; and that, after certain correspondence and telephone conversations, a meeting was held on or about September 4, 1941, between counsel for plaintiffs and counsel for The Mt. Clemens Pottery Company, to complete details for an examination by plaintiffs of the books and records of The Mt. Clemens Pottery Company, pursuant to this Court's order of June 13, 1941; and at said meeting, no demand was made for an answer to the "interrogatories" attached to plaintiffs' complaint, although the so-called "interrogatories" were, like the examination, directed to a determination of hours worked by, and wages paid to, certain employees of The Mt. Clemens Pottery Company.

Deponent further says that in a letter under date of November 3, 1941, addressed to Hon. Frank A. Picard (a copy of said letter having been received by deponent) counsel for plaintiffs stated in part:

> "Although we understood the Court's ruling of June 13th to require The Mt. Clemens Pottery Company to answer our interrogatories, we are in-

formed that the defendants have never filed the same. We would like to reserve the privilege, therefore, of having the Court pass upon the necessity of the defendants answering these interrogatories at the hearing Monday morning, November 10, 1941."

Deponent further says that on the hearing held November 10, 1941, on the motion of The Mt. Clemens Pottery Company for further particulars, counsel for plaintiffs did ask the Court to pass on the necessity of the defendant answering the "interrogatories," and the Court after examining the said "interrogatories" and hearing arguments of counsel announced that there would be required only the production for examination of a portion of those records, the tabulation of which was requested in said "interrogatories," and this is duly provided for in the Court's order of November 10, 1941; and, as appears from the other affidavits hereunto annexed, this order has been fully complied with.

Further deponent says not.

Frank E. Cooper.

Subscribed and sworn to before me
this 12th day of December, 1941.

(sgd.) Sophia S. Fillipps,
Notary Public, Wayne County, Mich.
My commission expires Oct. 1, 1945.

[SEAL]

ORDER

(Filed December 15, 1941)

At a session of said Court held in the Federal Building, in the City of Detroit, Michigan, on the 15th day of December, 1941.

Present: Hon. Frank A. Picard, District Judge.

The above matter having come on to be heard upon motion of plaintiffs for entry of judgment against The Mt. Clemens Pottery Company and for appointment of a Master, and counsel being heard and the Court being fully advised in the premises, it is hereby

Ordered that the said motion for judgment be and is hereby denied.

Frank A. Picard,
District Judge.

ANSWER OF MT. CLEMENS POTTERY COMPANY AND MOTIONS TO DISMISS AND STRIKE

(Filed Jan. 2, 1942)

Now comes The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by its attorneys, and saving and reserving unto itself all manner of benefit of exception to the many inaccuracies and imperpections in the complaint contained, and saving and reserving unto itself all manner of benefit of its motion to dismiss said complaint, which is attached to this, its answer thereto, says:

Answering the introductory and unnumbered paragraph of the complaint, this defendant admits that each of the named individual plaintiffs is an employee or former employee of The Mt. Clemens Pottery Company, and that the Pottery Company is a Michigan corporation doing business at Mt. Clemens, Michigan, and that Charles E. Doll, Sr., is Vice-President and General Manager of said company, and in this connection this defendant shows unto the Court that it has carried on business upwards of 25 years and that at no time during all this period has it been engaged in any wage dispute with its employees but on the contrary it had paid its employees wages above the prevailing scale in the industry, and this defendant shows that although plaintiff Local 1083, United Pottery Workers of America, affiliated with the C.I.O., has called two strikes at this defendant's plant within the last ten months, neither strike was based on demands as to wages or hours. Further answering, this defendant admits that the defendant, S. S. Kresge Company, a Michigan corporation, claims a substantial owner-

ship of the stock of said Mt. Clemens Pottery Company, but this defendant denies that said S. S. Kresge Company acts as an employer of the employees of the Mt. Clemens Pottery Company or supervises the policies and affairs of the Mt. Clemens Pottery Company and denies that the plaintiffs or any of them do or can sue for any unnamed employees. This defendant denies all of the allegations of said paragraph not herein expressly admitted.

1. Answering paragraph 1 of the complaint, this defendant denies that this action can properly be brought by the named plaintiffs, or any of them, under Section 16(b) of the Fair Labor Standards Act and further denies that it can be brought for or on behalf of other employees alleged to be similarly situated or any employees other than the named individual plaintiffs. This defendant for lack of information sufficient to form a belief neither admits nor denies that the United Pottery Workers of America is an unincorporated trade association affiliated with the Congress of Industrial Organizations or that Local 1083 thereof has a majority of its members among the employees of The Mt. Clemens Pottery Company. This defendant denies that all the individuals whose names appear on the so-called "Designation" heretofore filed herein have designated Local 1083 as their representative or as representative of its members to bring this action, and for lack of information sufficient to form a belief neither admits nor denies whether any of said members have so designated the Union, but shows that said Union cannot lawfully be designated as representative to maintain an action for employees under the Fair Labor Standards Act. This defendant denies that plaintiffs have any action under the Fair Labor Standards Act of 1938 or otherwise against this defendant.

2. Answering paragraph 2, this defendant denies that it has violated the provisions of the Fair Labor Standards Act and denies that its employees are engaged in inter-

state commerce. This defendant admits that it purchases certain raw materials outside of Michigan, and that some of its finished products are sold in interstate commerce, but denies all of the other allegations in said paragraph contained.

3. There is no paragraph numbered 3 in the complaint.

4. Answering paragraph 4, this defendant denies all allegations of fact therein made, and as to the statement of the provisions of the Fair Labor Standards Act refers to the said statute.

5. Answering paragraph 5, this defendant denies the allegation of fact therein made, and as to the conclusions of law begs leave to refer to the provisions of the statute referred to.

6. Answering paragraph 6, this defendant admits that the employees claimed to be represented in this action work on a piece-work, or hourly rate basis as hereinafter set forth, and shows that all its employees have been fully paid for all work done. Further answering, this defendant denies all of the other allegations in said paragraph contained, and shows that the allegations charging that certain employees performed home work have been stricken by consent, and that no such claim is now made. This defendant further shows that the allegations that this defendant deducted the sum of 10% from the pay of new employees and changed employees from one job to another with a continuation of such deductions must be deemed stricken pursuant to counsel's statements in open court, and because of plaintiffs' failure to furnish particulars in connection with this charge in accordance with the orders of the Court heretofore made herein.

7. Answering paragraph 7, this defendant denies the allegations thereof, and shows that said allegations must be deemed stricken by consent pursuant to the admission

of counsel for plaintiffs in open court that no such claim is made, and by reason of the failure of plaintiffs to particularize the allegations in said paragraph contained pursuant to the prior orders of this Court. Further answering, this defendant shows unto the Court that its time clocks accurately reflect the precise minute at which the employees' clock cards are punched and that the company's computation as to the total hours worked by each employee for the preceding day is recorded each morning on the clock cards, and that each employee sees each day the number of hours he is credited with having worked the day before, and that none of the employees prior to the institution of this action have ever made any claim that they worked longer hours than shown on the records, computed on the basis which has been uniformly followed by this defendant for many years and which is followed, as this defendant is informed and believes, by many other companies.

8. Answering paragraph 8, this defendant denies all of the allegations therein made, except that it admits that certain employees claimed to be represented herein are employed in the clay shop, on the bisque and glost belts, in the dipping department, decorating room, packing shed, and slip off department, and that among such employees there are some who load and unload, pack, handle, ship, and process the products of this defendant.

9. Answering paragraph 9, this defendant has no knowledge as to what plaintiffs are informed. It denies all the other allegations in said paragraph, and shows that it has produced for the examination of plaintiffs all its records of hours worked and wages paid all employees claimed to be represented by plaintiffs, for the period from September 24, 1938, to the date of the filing of the complaint herein.

As to the interrogatories attached to the complaint, this defendant omits further answer to the same, pursuant to

the orders of this Court under date of June 13, 1941, November 10, 1941, and December 15, 1941.

This defendant denies that plaintiffs have suffered any damages, and prays that the complaint be dismissed with costs to it most grievously sustained.

BILL OF PARTICULARS

Answering the Bill of Particulars heretofore filed by plaintiffs herein, this defendant shows unto the Court that the same is a mere subterfuge and gives no information whatever, and this defendant shows it should have a clear statement as to what is claimed for each employee alleged to be represented, and shows that failure so to particularize makes it impossible for this defendant properly to plead or prepare for trial, and prevents a proper narrowing of the issues and will result in unduly prolonging the trial and consuming the time of the Court. This defendant further says:

1. Answering Subdivision I, this defendant denies that overtime work was performed by the employees listed on Exhibit A thereto, without proper and lawful compensation therefor, and denies that said employees are represented by any of the plaintiffs herein, and denies all the other allegations therein.

2. Answering Subdivision II, this defendant denies that the female employees listed in Exhibit A received subminimum wages, and denies all the other allegations therein.

3. Answering Subdivision III, this defendant shows that all claims made therein have been stricken by consent of plaintiffs' counsel in open court, and denies the allegations therein contained, except that it admits on

information and belief that plaintiffs are unable to give the names of any employees performing "home work," and shows that no employees did perform "home work."

4. Answering Subdivision IV, this defendant denies that the so-called written "authorization" of the employees claimed to be represented is valid or legally effective, and denies that any of the plaintiffs may prosecute this action as representative of the employees named in the said Designation, "Exhibit A," and denies that the records of this defendant showing the hours worked by its employees are incorrect or false, and denies that they do not reveal the time worked by the employees, and denies that it has credited the employees with less than the actual time worked, and shows that it has in many cases credited employees with more than the actual time worked, and denies that the hours stamped on the time cards showing the time of entry to and exit from the plant reveal the total hours worked, and shows that this defendant's computations on the time cards credit the employees with at least all time worked, and often with longer hours than actually worked, and denies that the computation of the total hours worked has been falsified or incorrectly computed, and denies that the contents of the time cards referred to are correctly or properly set forth in said Bill of Particulars, and denies that the examples are typical of all the time cards, and denies all the allegations in said Bill of Particulars not herein expressly admitted.

AMENDED BILL OF PARTICULARS

Answering the amendment to the Bill of Particulars, this defendant shows unto the Court that the same is a mere subterfuge and gives no information whatever, and this defendant shows it should have a clear statement as

to what is claimed for each employee alleged to be represented, and shows that failure so to particularize makes it impossible for this defendant properly to plead or prepare for trial, and prevents the proper narrowing of the issues and will result in unduly prolonging the trial and consuming the time of the Court. This defendant further says:

1. Answering Subdivision I, this defendant denies that any of the employees whose names appear on Exhibit B are entitled to minimum wage compensation, and denies that any of them worked greater hours than those shown on the time cards or other records of The Mt. Clemens Pottery Company, and denies all the other allegations therein.

2 (A). Answering Subdivision II (A), this defendant shows that its employees are not permitted to check into the plant more than 14 minutes before their established times for starting work and that an employee who checks in before the established starting time is prohibited from commencing work before the established starting time and is given credit for commencing work at the established starting time, whether he does or not, and that an employee checking into the plant after his regular starting time commences work at the succeeding quarter hour and is so credited; and that an employee is given up to 14 minutes after the close of work to check out of the plant, and that if he does not do so, he is credited with additional working time. This defendant further shows that where an employee punches the time clock before starting work or after quitting work this defendant does not compensate such employee for periods he was in the plant but not working prior to the start of work or subsequent to the close of work, and further shows that the examples set forth in said paragraph do not correctly reflect the actual records which they purport to copy, and denies all the allegations therein not expressly admitted.

2 (B). Answering Subdivision II (B), this defendant denies the allegations therein contained, and shows that the examples set forth therein do not correctly state the contents of this defendant's records.

2 (C). Answering Subdivision II (C), this defendant denies the allegations of fact therein contained. As to the examples given, this defendant begs leave to refer to the original records, when properly produced and proven, for a correct statement of the contents thereof.

2 (D). Answering Subdivision II (D), this defendant denies all the allegations thereof, and further answering, shows that the established piece work rates include compensation for all non-productive work incidental to the particular job, and shows that all time spent in non-productive work is counted as hours worked.

2 (E). Answering Subdivision II (E), this defendant denies all the allegations therein made.

2 (F). Answering Subdivision II (F), this defendant denies all the allegations therein made.

2 (G). Answering Subdivision II (G), this defendant denies all the allegations therein made.

2 (H). Answering Subdivision II (H), this defendant denies all the allegations of fact therein contained and as to the statements as to what appears on certain records, this defendant prays leave to refer to the originals of said records when the same are properly produced and proved.

2 (I). Answering Subdivision II (I), this defendant admits that if employees work in a group and are paid on a group piece work basis and if an additional employee

is temporarily added to the group and performs a part of its work a proportionate part of the group's earnings is paid to such added employee, and this defendant shows that it is required so to do under the provisions of the law, and denies all the allegations therein made not herein admitted.

2 (J). Answering Subdivision II (J), this defendant denies that the time cards of its employees were improperly marked, and shows that the examples given do not correctly reflect the company's records, as will more fully appear when said records are produced and proved, and this defendant shows that the plaintiffs have been paid properly, and in compliance with the requirements of the law, for all time worked, including overtime, and that most of them have received annually pay for two weeks in which they did no work, and denies that any practices were followed in order to prevent the plaintiffs receiving the wages and overtime compensation to which they were entitled, and denies that Exhibits A or B constitute a list of the employees who claim minimum wage compensation or who claim greater hours worked than those shown on the time cards, and denies that any of said employees have any such claims, and denies all of the other allegations in said Subdivision II (J) contained.

Wherefore, this defendant prays that the complaint be dismissed with costs to it most grievously sustained.

DEFENSES RAISING ISSUES OF LAW AND AFFIRMATIVE DEFENSES

1. All claims of the individual plaintiffs and of the employees claimed to be represented by Local 1083 United Pottery Workers of America—C.I.O., for all periods prior to November 14, 1939, were compromised, settled, released

and made the subject of an accord and satisfaction prior to the institution of this suit and their claims, if any, must therefore be limited to periods subsequent to November 14, 1939.

2. Except in a few particular instances, the individual plaintiffs and the employees claimed to be represented by plaintiff Union were not paid for hours worked but were paid on a piece rate basis for work done, and they and each of them agreed to work on such basis of compensation, and this defendant shows that therefore the provisions of Sections 6 and 7 of the Fair Labor Standards Act of 1938 have no application to their employment except to the extent of imposing a requirement that the earnings of the employees must equal or exceed what they would have been paid if compensated on an hourly basis or other time basis at the minimum rate established by law, and this defendant shows that all of its employees earned sums at least equal to and most of them earned sums greatly in excess of the standards established by law.

3. The employment of the individual plaintiffs and all other employees claimed to be represented by Local 1083, United Pottery Workers of America—C.I.O., was pursuant to individual hiring agreements and the customary practice of this defendant, which was well known to all employees and acquiesced in by them, that all employees regardless of their piece work earnings would be paid at least the minimum rate provided by law plus time and a half for overtime and, in addition, would receive such excess sum as would make up the difference between the earnings so computed and the amount the individual was able to earn by accomplishing enough work to earn in excess of the guaranteed hourly rate. All of the plaintiffs and all other employees claimed to be represented by United Pottery Workers of America—C.I.O., received sums equal to or in excess of the established rates fixed

by statute and agreement for all hours worked, including overtime hours, on a basis of compensation which was agreed to by said employees and which is binding on them, not being in contravention of any law. The standards by which this defendant determined working time were lawful and reasonable, and represented the prevailing customs and practices in the particular industry and in other industries, and were and are supported by bona fide agreements and by practices in the industry.

4. The individual plaintiffs and likewise all other employees claimed to be represented by Local 1083, United Pottery Workers of America—C.I.O., and likewise this defendant, all relied on and jointly and severally accepted the ruling made by the Wage and Hour Division at the time of its inspection of November, 1939, under which the Wage and Hour practices of this defendant as established and followed for all periods subsequent to November 14, 1939, were in compliance with the law. By reason of the mutual acceptance of this administrative interpretation of the statute, which this defendant asserts is a correct interpretation, and by reason of this defendant's reliance on the employees' acceptance of such interpretation, and by reason of the failure of the employees to make any objection to this defendant's acceptance of such ruling for a long period of time, and by reason of the acceptance by the employees of sums hitherto paid them by this defendant as payment in full for their services, and by reason of the employees accepting without objection this defendant's computation of hours worked, made known daily to each of the employees, as above set forth, and by reason of all the circumstances of the case, the said plaintiffs and other employees are estopped from asserting their present claim that this defendant erroneously computed their hours of work and wages due them.

5. The time clock cards of the plaintiffs and all of the employees were not used to obtain a record of and in fact

do not show the hours worked by the employees and do not show the time during which employees were required to be on duty or to be on this defendant's premises or to be at a prescribed work place, but on the other hand show rather the times of entry to and exit from the plant. The employees were not permitted to enter the plant more than 14 minutes prior to their established starting time in the morning or afternoon. On entering the plant they punched time clocks but did not begin work until an established starting time and this defendant did not suffer or permit any of the employees to begin work prior to the established starting time. On the completion of the established working periods the employees ceased work and were allowed 14 minutes thereafter to clean up and leave the plant, and this defendant did not suffer or permit any of its employees to continue at work between stopping time and the time the employees punched out their time clock cards and left the plant.

6. The individual plaintiffs and the employees claimed to be represented by Local 1083, United Pottery Workers of America—C.I.O., did not remain at work continuously between their starting and stopping times but at frequent intervals took recesses of several minutes' duration, claiming and having a right to do so under their employment agreement, under which they were not paid solely for time spent on the job but rather for work done, and this defendant shows that its computation of hours worked was, if anything, as it is informed and believes, in excess of the amount of time actually worked by the employees.

7. The complaint does not show that all the plaintiffs nor the employees claimed to be represented by Local 1083, United Pottery Workers of America—C.I.O., were engaged in occupations subject to the provisions of the Fair Labor Standards Act of 1938 during each of the several weeks for which claims are asserted and therefore fails to state a claim on which relief may be granted.

8. Local 1083, United Pottery Workers of America—C.I.O., is not a proper party to maintain in its own name, or as an agent or representative of any employees of this defendant, an action for the recovery of independent and several claims of individual employees.

9. All of the employees of this defendant have been fully paid for all work done by them.

10. This defendant further shows unto the Court that the methods employed in the prosecution of this action and the acts of plaintiffs in the premises, as this defendant is informed and believes, and so charges, constitute an abuse of the Court's process; and in this connection this defendant shows that this action was filed on or about April 16, 1941, without any prior notice to or demands on this defendant, and two days after the calling of a strike by plaintiff, Local 1083, United Pottery Workers of America—C.I.O., at the plant of this defendant on April 14, 1941; and shows that the so-called amended Bill of Particulars was filed on or about November 26, 1941, and coincident with another strike, although plaintiffs had on or about November 24, 1941, as this defendant is informed, applied for and obtained an extension of time until December 15, 1941, in which to file such particulars, on the plea that additional time was required in order to enable plaintiffs to complete their examination of this defendant's records, but on the calling of another strike, an amendment to the Bill of Particulars was filed without further examination, and shortly thereafter a scandalous motion for judgment was filed, which the Court denied; and shows that some of the plaintiffs, as this defendant is informed, have instituted another action in the Courts of Ohio by attachment or garnishment proceedings, in which the same or similar claims are made, purely to vex and harass this defendant, and without justification; and shows that plaintiffs have refused to properly par-

ticularize their claims and have made claims purporting to be based on this defendant's records which in fact misrepresent and misstate this defendant's records, and have, as this defendant charges, utilized the bringing of this action as a basis for publishing baseless and unjustified charges; and have already abandoned many of the most serious charges originally made, such as the claim that this defendant's time clocks were "doctored" and did not correctly register the time at which they were punched.

Wherefore, this defendant prays that the complaint be dismissed with costs to it most grievously sustained.

Beaumont, Smith & Harris,
Albert E. Meder
Frank E. Cooper
Bert V. Nunneley,
Of Counsel,
Attorneys for Defendant,
Mt. Clemens Pottery Company,
2900 Union Guardian Building,
Detroit, Michigan.

January 3, 1942.

MOTIONS

Now comes the defendant Mt. Clemens Pottery Company and moves the Court as follows:

1. This defendant moves that the said complaint be dismissed for the reason that it does not state a claim on which relief may be granted.

2. This defendant moves that the complaint be dismissed insofar as it purports to present a class or representative action, and that the scope of the action be limited to the claims of the named individual plaintiffs and of such other individuals as may properly intervene, for the following reasons, among others:

(a) The above entitled cause is not the type of case wherein Section 16 (b) of the Fair Labor Standards Act of 1938 or the rules of this Court permit the joining of separate and individual and independent claims of several parties, it appearing on the face of the complaint that there are not common questions of law and fact involved nor is common relief sought, nor is the character of the right alleged several.

(b) There is no proper showing that there exists any class or group of employees who are similarly situated, nor is there any showing that the named plaintiffs can provide proper or adequate representation of any such class.

(c) The above entitled action may not be maintained except by and for such individual employees as are named in the complaint or such other employees as may properly intervene herein on their own behalf, setting up their specific claims.

(e) The complaint does not contain allegations sufficient to justify the bringing of any such class or representative action as is sought to be maintained.

3. This defendant renews its motion to strike hitherto and on or about the 12th day of May, 1941, filed in the above entitled action.

4. This defendant hereby renews its several motions for particulars and to strike certain allegations by reason of the failure of the plaintiffs to furnish particulars and

adopts by reference the allegations in its motions dated and filed on or about May 12, November 1 and December 6, 1941, respectively.

Beaumont, Smith & Harris,
Albert E. Meder
Frank E. Cooper

Bert V. Nunneley,
Of Counsel,

Attorneys for Defendant,
Mt. Clemens Pottery Company,

2900 Union Guardian Building,
Detroit, Michigan.

January 3, 1942.

ORDER

(Filed Jan. 5, 1942)

At a session of said Court held at the Federal Building in the City of Detroit, County of Wayne, State of Michigan, on the 5th day of January, A. D. 1942.

Present: Honorable Frank A. Picard, District Judge.

This matter came on for hearing before the Court on the following:

First, motion of the plaintiffs for judgment and motion of the plaintiffs for appointment of Special Master.

Second, Answer of Mt. Clemens Pottery Company to motion for judgment and for appointment of Special Master.

Third, Motion of Mt. Clemens Pottery Company to strike or for further particulars.

The latter includes Objections to Interrogatories annexed to the complaint.

Both parties having, by counsel, argued the foregoing the Court upon due consideration thereof finds as follows:

First, the request of plaintiffs for judgment at this time is denied without prejudice to their right to renew said motion at a later date.

Second, Motion of the defendant, Mt. Clemens Pottery Company to strike or for further particulars is denied. The Mt. Clemens Pottery Company shall file its answer herein on or before January 12, 1942.

Third, Plaintiffs' request for the Appointment of a Special Master herein will be held in abeyance until the filing of the answer by defendant herein, Mt. Clemens Pottery Company, on or before January 12, 1942.

Frank A. Picard,
United States District Judge

SUPPLEMENTAL ORDER

(Filed Jan. 6, 1942)

At a session of said Court held at the Federal Building in the City of Detroit, County of Wayne, State of Michigan, on the 6th day of January, A. D. 1942.

Present: Honorable Frank A. Picard, District Judge.

This matter came on for hearing before the Court on the following:

First, motion of the plaintiffs for judgment and motion of the plaintiffs for appointment of Special Master.

Second, Answer of Mt. Clemens Pottery Company to motion for judgment and for appointment of Special Master.

Third, Motion of Mt. Clemens Pottery Company to strike or for further particulars.

Both parties having, by counsel, argued the foregoing, the Court upon due consideration thereof finds as follows:

First, the request of plaintiffs for judgment at this time is denied without prejudice to their right to renew said motion at a later date.

Second, Motion of the defendant, Mt. Clemens Pottery Company to strike or for further particulars is denied. The Mt. Clemens Pottery Company shall file its answer herein on or before January 12, 1942.

Third, Plaintiffs' request for the Appointment of a Special Master herein shall be held in abeyance until the filing of the answer by defendant herein, Mt. Clemens Pottery Company, on or before January 12, 1942.

Frank A. Picard,
United States District Judge.

EXCEPTIONS OF DEFENDANT, MT. CLEMENS POTTERY COMPANY TO SUPPLEMENTAL ORDER OF JANUARY 6, 1942

(Filed Jan. 10, 1942)

Now comes The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by its attorneys,

and notes of record its exceptions to the Supplemental Order entered herein under date of January 6, 1942, particularly insofar as the said order denies this defendant's motion to strike or for further particulars, on the grounds that such denial is contrary to law and the just rights of this defendant; and on the grounds that such denial renders it impossible for this defendant to apprise itself of the nature of the several and separate claims advanced on behalf of the plaintiffs, and of the parties claimed to be represented by plaintiffs herein, in time to properly prepare its responsive pleadings or to prepare for trial; and on the grounds that under the court rules in such case made and provided the plaintiffs should be required to state in their complaint in plain language what violations of the Fair Labor Standards Act are claimed to have occurred, as to what individuals it is claimed such violations occurred, when each such alleged violation is alleged to have occurred, what amount of damages is claimed for each individual as a result of such alleged violations, and the other particulars of their claims heretofore sought in this defendant's motions.

Beaumont, Smith & Harris,
Albert E. Meder,
Frank E. Cooper,
Bert V. Nunneley,
Of Counsel,
Attorneys for Defendant,
Mt. Clemens Pottery Company.
2900 Union Guardian Building,
Detroit, Michigan.

January 9, 1942.

MOTION FOR SUMMARY JUDGMENT

(Filed Jan. 16, 1942)

Now comes the plaintiffs herein, including all persons who have intervened and filed their designations herein and upon the pleadings and records in this cause, and upon the annexed affidavits marked "Exhibits C, D and E," and move the Court to grant Summary Judgment against the defendant, Mt. Clemens Pottery Company, herein under and by virtue of Rule 56 of the Rules of Civil Procedure for the District Courts of the United States, and for the grounds of their Motion state:

(1) This action is brought by virtue of the provisions of the Fair Labor Standards Act of 1938 relating to the payment of overtime compensation and establishing maximum hours for industries engaged in interstate commerce.

(2) Plaintiffs state that pursuant to order of the Court herein defendant, Mt. Clemens Pottery Company, filed its answer herein on or about January 5, 1942. That in said answer defendant, Mt. Clemens Pottery Company, admits that each of the individual named plaintiffs is an employee, or former employee of the Mt. Clemens Pottery Company.

(3) Plaintiffs further state that on Page 7 of the Answer of The Mt. Clemens Pottery Company said defendant admits and states as follows:

> "This defendant further shows that where an employee punches the time clock before starting work or after quitting work this defendant does not compensate such employee for periods he was in the plant but not working prior to the start of work or subsequent to the close of work."

(4) The named plaintiffs individually state for themselves and for all other persons who have filed authorizations and designations herein worked in defendant's employment in accordance with the time set forth on the time clock records maintained by defendant and are entitled to compensation for the hours worked as set forth on said time clock records.

(5) The named plaintiffs for themselves and for and in behalf of all other employees similarly situated and particularly those who filed their designations or authorizations herein state that said time card records, maintained by defendant, Mt. Clemens Pottery Company, in accordance with the provisions of the Fair Labor Standards Act of 1938 provided an accurate record of the time actually worked in the service of the defendant, Mt. Clemens Pottery Company. That affidavits in support of said allegations are attached hereto, and marked "Exhibits C, D and E."

Wherefore, plaintiffs pray that their Motion for Summary Judgment be in all things granted and that plaintiffs, for themselves and for and in behalf of all other employees similarly situated and particularly for those who have filed their designations or authorizations herein, have judgment in accordance with the prayer of the complaint filed herein for amount of monies owing for time spent upon the premises of the defendant, in the service of the defendant, Mt. Clemens Pottery Company and as more fully set forth upon the time clock records of said Company.

Steve Anderson,
Earl Trombley,
Lillian Socia,
Albert Watkins, et al., etc.,
Plaintiffs.
By: Edward Lamb,
Counsel for Plaintiffs,
1014 Edison Building,
Toledo, Ohio.

AFFIDAVIT

State of Michigan,
County of Macomb—ss.

Before me, the undersigned authority, on this day personally appeared Steve Anderson, one of the plaintiffs in the above entitled case, who being first duly sworn deposes and states:

(1) I am one of the plaintiffs in the above entitled cause; that I am the President of Local 1083, United Pottery Workers of America, an unincorporated trade association whose members are employees of the defendant, Mt. Clemens Pottery Company, Mt. Clemens, Michigan. That since on or about October 24, 1938, the effective date of the Fair Labor Standards Act of 1938, I have been an employee of said Mt. Clemens Pottery Company, Mt. Clemens, Michigan.

(2) I have read the answer of the defendant, Mt. Clemens Pottery Company, particularly Page 7 thereof wherein said Company states that it does not compensate employees for periods he was in the plant but not working prior to the start of work and subsequent to the close of work. Deponent states that he and other employees of said Company worked in the defendant's employment and service during all the times shown upon the time clock records kept and maintained by said Mt. Clemens Pottery Company.

(3) Deponent further states that at all times set forth in the time clock records kept and maintained by the defendant, Mt. Clemens Pottery Company said deponent and all other employees whose time is shown on said records were on the property and premises of said Company and

engaged in the employment and service of said Mt. Clemens Pottery Company. Deponent further states that he and all other employees entered the plant of defendant Mt. Clemens Pottery Company prior to punching the time clock as aforesaid and that thereafter deponent and all other employees were required to and did engage immediately upon activities, employment and services in behalf of defendant, Mt. Clemens Pottery Company.

(4) Deponent further states that, to his personal knowledge the time clock records accurately reveal the time actually worked by this employee and all other employees of The Mt. Clemens Pottery Company and that the computation of time worked by this deponent and all other employees was erroneously made by said defendant, Mt. Clemens Pottery Company, in such a manner and fashion as not to give credit for the hours worked by the employees of Mt. Clemens Pottery Company as aforesaid. Deponent further states that to his personal knowledge he and other employees started to work immediately after punching the said time clock; that the company over the objection of said employees, nevertheless paid only from the succeeding quarter hour when reporting into work and only to the preceding quarter hour when reporting out to lunch or at the end of the working day; that the defendant, Mt. Clemens Pottery Company, over the objection of this plaintiff and all other employees failed to pay this deponent and all other employees for the time actually worked on defendant's premises and in defendant's service and employment.

Steve Anderson.

Subscribed and sworn to before me
this 10th day of January, 1942.

Lester A. Almstadt,
Notary Public, Macomb County, Mich.
My commission expires Mar. 9th, 1945.

AFFIDAVIT

State of Michigan,
County of Macomb—ss.

Before me, the undersigned, on this day personally appeared Lillian Socia, one of the plaintiffs in the above entitled case, who being first duly sworn deposes and states:

(1) I am one of the plaintiffs in the above entitled cause; that since on or about October 24, 1938, the effective date of the Fair Labor Standards Act of 1938, I have been an employee of said Mt. Clemens Pottery Company, Mt. Clemens, Michigan.

(2) I have read the answer of the defendant, Mt. Clemens Pottery Company, particularly Page 7 thereof wherein said Company states that it does not compensate employees for periods he was in the plant but not working prior to the start of work and subsequent to the close of work. Deponent states that she and other employees of said company worked in the defendant's employment and service during all the times shown upon the time clock records kept and maintained by said Mt. Clemens Pottery Company.

(3) Deponent further states that at all times set forth in the time clock records kept and maintained by the defendant, Mt. Clemens Pottery Company said deponent and all other employees whose time is shown on said records were on the property and premises of said Company and engaged in the employment and service of said Mt. Clemens Pottery Company. Deponent further states that she and all other employees entered the plant of de-

fendant, Mt. Clemens Pottery Company, prior to punching the time clock and that thereafter deponent and all other employees were required to and did engage immediately upon activities, employment and services in behalf of the defendant, Mt. Clemens Pottery Company.

(4) Deponent further states that, to her personal knowledge the time clock records accurately reveal the time actually worked by this employee and all other employees of the Mt. Clemens Pottery Company and that the computation of time worked by this deponent and all other employees was erroneously made by said defendant, Mt. Clemens Pottery Company, in such a manner and fashion as not to give credit for the hours worked by the employees of Mt. Clemens Pottery Company as aforesaid. Deponent further states that to her personal knowledge she and other employees started to work immediately after punching the said time clock; that the company over the objection of said employees, nevertheless paid only from the suceeding quarter hour when reporting into work and only to the preceding quarter hour when reporting out to lunch or at the end of the working day; that the defendant, Mt. Clemens Pottery Company, over the objection of this plaintiff and all other employees failed to pay this deponent and all other employees for the time actually worked on defendant's premises and in defendant's service and employment.

Lillian Socia.

Subscribed and sworn to before me
this 10th day of January, 1942.

Lester A. Almstadt,
Notary Public, Macomb County, Mich.
My commission expires Mar. 9th, 1945.

AFFIDAVIT

State of Michigan,
County of Macomb—ss.

I, Floyd Pearl, being first duly cautioned and sworn depose and say:

(1) That I am now and have been since on or about October 24, 1938 an employee of The Mt. Clemens Pottery Company. That I have intervened in the above entitled proceedings and that I have heretofore filed my designation and authorization authorizing the named plaintiffs to act in my behalf as fully as if I had been named a plaintiff therein. That I as an intervener seek the same relief as do the named plaintiffs and all other persons and employees who have filed their designations herein.

(2) That I have read the answer of the defendant, Mt. Clemens Pottery Company, particularly Page 7 thereof wherein said Company states that it does not compensate employees for periods he was in the plant but not working prior to the start of work and subsequent to the close of work. Deponent states that he and other employees of said Company worked in the defendant's employment and service during all the times shown upon the time clock records kept and maintained by said Mt. Clemens Pottery Company.

(3) Deponent further states that at all times set forth in the time clock records kept and maintained by the defendant, Mt. Clemens Pottery Company said deponent and all other employees whose time is shown on said records were on the property and premises of said Company and engaged in the employment and service of said Mt.

Clemens Pottery Company. Deponent further states that he and all other employees entered the plant of defendant, Mt. Clemens Pottery Company, prior to punching the time clock and that thereafter deponent and all other employees were required to and did engage immediately upon activities, employment and services in behalf of the defendant, Mt. Clemens Pottery Company.

(4) Deponent further states that, to his personal knowledge the time clock records accurately reveal the time actually worked by this employee and all other employees of The Mt. Clemens Pottery Company and that the computation of time worked by this deponent and all other employees was erroneously made by said defendant, Mt. Clemens Pottery Company, in such a manner and fashion as not to give credit for the hours worked by the employees of Mt. Clemens Pottery Company as aforesaid. Deponent further states that to his personal knowledge he and other employees started to work immediately after punching the said time clock; that the company over the objection of said employees, nevertheless paid only from the succeeding quarter hour when reporting into work and only to the preceding quarter hour when reporting out to lunch or at the end of the working day; that the defendant, Mt. Clemens Pottery Company, over the objection of this plaintiff and all other employees failed to pay this deponent and all other employees for the time actually worked on defendant's premises and in defendant's service and employment.

Floyd Pearl.

Subscribed and sworn to before me
this 10th day of January, 1942.

Lester A. Almstadt,
Notary Public, Macomb County, Mich.
My commission expires Mar. 9th, 1945.

ANSWER OF DEFENDANT MT. CLEMENS POTTERY COMPANY TO MOTION FOR SUMMARY JUDGMENT

(Filed Jan. 24, 1942)

Now comes The Mt. Clemens Pottery Company, one of the defendants in the above entitled case, by its attorneys, in answer to plaintiffs' motion for summary judgment, and shows unto the Court as follows:

1. Answering paragraph (1), this defendant admits that this action purports to be brought under the Fair Labor Standards Act of 1938, but denies that the action is properly brought under the said statute and denies that the subject of the Act is correctly stated in the motion.

2. Answering paragraph (2), this defendant refers to its answer, heretofore filed herein, for a statement as to the contents thereof.

3. Answering paragraph (3), this defendant shows that plaintiffs' motion does not fully state the allegations contained on page (7) of this defendant's answer (where answer is made to subdivision II(A) of plaintiffs' amended Bill of Particulars) but, on the contrary, refers to a part only of such allegation, and for a correct and full statement of its position, this defendant refers to its answer aforesaid.

4. Answering paragraph (4), this defendant denies that plaintiffs, or any of them, or any individuals claimed to be represented by them, were engaged in work in this defendant's employment during all the periods indicated by the printed figures on the time clock cards as a record

of the time of the employees' entrance to and exit from the plant, and denies all the other allegations in said paragraph contained, and shows unto the Court that there was manually recorded each day on each time clock card a figure showing the number of hours worked by the holder of the card during the preceding day, and further shows that each such employee has at all times been fully compensated, in accordance with the provisions of the law, for all hours worked, and shows that no employee worked longer hours than he is so given credit for on said time clock cards.

5. Answering paragraph (5), this defendant denies the same, except that it shows that no employee worked longer than indicated by the figures recorded by this defendant in the manner aforesaid on the time clock cards as showing the total hours worked each day by the respective holders of said cards. Further answering, this defendant denies that there are involved herein any claims of any employees who were not named in the complaint or who did not properly intervene herein.

6. Further answering, this defendant shows that any claims of plaintiffs must be denied by reason of the several affirmative defenses set forth fully in this defendant's answer aforesaid, reference to which is hereby prayed, and by reason of the grounds set forth in the motion to dismiss annexed to this defendant's answer; and this defendant shows that plaintiffs have made no attempt to meet such defenses, and that for this reason, among others, plaintiffs' motion for summary judgment should be denied. Defendant further shows that for the reasons stated in the annexed affidavit of Charles E. Doll, Sr., this defendant cannot properly present by affidavit all the facts on which such affirmative defenses will be based.

7. There are attached hereto and hereby made a part hereof certain affidavits; and this defendant requests that it may be afforded time, if it should be so advised and if

it should appear necessary, to supplement the said affidavits, as provided in Rule 56, Rules of Civil Procedure.

8. Answering the prayer for relief, this defendant denies that plaintiffs are entitled to any relief whatever.

Wherefore, this defendant prays that plaintiffs' said motion be in all respects denied, with costs.

Beaumont, Smith & Harris,
Albert E. Meder
Frank E. Cooper,
Bert V. Nunneley,
Of Counsel,
Attorneys for Defendant,
Mt. Clemens Pottery Company,
2900 Union Guardian Building,
Detroit, Michigan.

Dated: January 23, 1942.

State of Michigan,
County of Macomb—ss.

CHARLES E. DOLL, SR., being first duly sworn, deposes and says that he is Vice-President and General Manager of The Mount Clemens Pottery Company, one of the defendants in the above entitled cause.

Deponent further says that he has read the complaint and answer and motion for summary judgment heretofore filed herein.

Deponent further states that The Mount Clemens Pottery Company has been engaged in business at Mount Clemens, Michigan, for twenty-seven years under deponent's management, and that at no time during all this

period has it been engaged in any wage dispute with its employees, but on the contrary it has paid its employees wages as good as or better than those prevailing in other plants in the pottery industry.

Deponent further states that he can competently testify of his own knowledge that each of the employees of The Mount Clemens Pottery Company has established times for starting and stopping work, and that employees are permitted to check into the plant for periods not in excess of fourteen minutes before such established starting time, not for the purpose of beginning work but only for the employees' convenience.

Deponent further states that he can competently testify of his own knowledge that employees are likewise given fourteen minutes' leeway to ring out of the plant after the established times for stopping work.

Deponent further says that he can competently testify of his own knowledge that the employees are not charged with any duties for such periods (from one to fourteen minutes in duration) when they may be in the plant prior to the established starting time (either at the beginning of the working day or at the renewal of work after the lunch period) or subsequent to the established stopping times (either for lunch or at the end of the working day).

Deponent further says that he can competently testify of his own knowledge that no employees are required to be at the plant prior to their established starting times. They are not permitted to punch in more than fourteen minutes before starting work; nor are employees required to remain on the premises after stopping work, but are permitted for their own convenience and

if they so desire to remain in the plant for periods up to fourteen minutes before ringing out.

Deponent further says that he can competently testify of his own knowledge that since previous to May, 1934, the payroll department of The Mount Clemens Pottery Company has each morning computed the number of hours worked by each production employee during the preceding day, and such computation is then recorded on each clock card so that each employee whenever he picks up his time clock card has before him a record as to the number of hours he is given credit for having worked on each preceding day of the pay period.

Deponent further says that he can competently testify of his own knowledge that no employee has at any time objected to such computations or claimed that any error existed and no claim was ever made that any employee worked longer hours than he was given credit for, prior to the filing of the complaint in this action.

Deponent further states that he can competently testify of his own knowledge that all the named individual plaintiffs and substantially all the employees claimed to be represented by plaintiff Union and substantially all the other production workers employed by the company work on piece rates, and therefore are paid primarily not for hours worked, but for work done.

Deponent further states that he can competently testify of his own knowledge that time clock cards showing the method of computation of hours worked by production employees of The Mount Clemens Pottery Company were examined by inspectors of the Wage and Hour Division of the United States Department of Labor in November, 1939, and one of said inspectors at that time interviewed many employees, and as deponent is advised discussed

with said employees the subject of their wages and hours, but neither the said inspectors nor the Wage and Hour Division claimed to deponent that The Mount Clemens Pottery Company's computations of hours worked by its production employees were in any respect not in compliance with the law.

Deponent further says that he is advised and believes that the payroll procedures of The Mount Clemens Pottery Company are fully in compliance with the law.

Deponent further says that he can competently testify of his own knowledge that employees do not remain at work continuously between their starting and stopping times, but at frequent intervals take recesses, during which periods they do no work and for which no deduction is made in computing the hours worked.

Deponent further says that he can competently testify of his own knowledge that The Mount Clemens Pottery Company has always kept, now has in its possession and control, and has made available to the plaintiffs' records, which as this deponent is advised, fully comply with every provision of the Wage and Hour Law, and particularly with the provisions of Section 11(c) thereof; and of which said records the time clock cards are only a minor portion.

Deponent further says that he has been engaged in the manufacturing business for the past twenty-seven years and upwards and has made a study and investigation of the method of computing time generally in use by concerns engaged in the pottery industry and other manufacturing concerns, and that the methods used by The Mount Clemens Pottery Company are the methods which have been customarily used by manufacturing companies for many years last past.

Deponent further says that the foregoing affidavit is made in opposition to plaintiffs' motion for summary

judgment, and is therefore restricted in scope to matters germane to said petition, and is not intended to cover and does not cover all the facts of the case, but on the contrary omits reference to many of the facts on which are based the special defenses of The Mount Clemens Pottery Company in the above entitled matter.

Deponent further says that proof of such other facts so pleaded in the answer of The Mount Clemens Pottery Company and not discussed in plaintiffs' motion for summary judgment or in the supporting affidavits annexed thereto, would require the examination of many witnesses and the production of numerous documents.

Further deponent says not.

Chas. E. Doll, Sr.

Subscribed and sworn to before me this 22nd day of January, 1942.

Eleanor Schulte,
Notary Public, Macomb County, Mich.
My commission expires 10-25-42.

State of Michigan,
County of Macomb—ss.

ERNEST HARMS, being first duly sworn, deposes and says that he is and at all times since October, 1938, has been an employee of the brushing and dipping department of The Mount Clemens Pottery Company, and that since July, 1939, he has been foreman in said department, and that he knows of his own personal knowledge and can competently testify that Steve Anderson and Lillian Socia have been during such period employed in said brushing and dipping department, and that this deponent is familiar with the hours worked by said Steve Anderson and Lillian Socia, respectively, and all other employees in said department.

Deponent further states of his personal knowledge that said Steve Anderson and Lillian Socia and likewise the other employees of The Mount Clemens Pottery Company in said department, were not engaged at work in The Mount Clemens Pottery Company's employment and services during all the times shown on the time clock cards as indicating the hour and minute when the employee checked into and out of the plant each day.

Deponent further states of his own knowledge that the hours printed on the time clock cards indicating the time of entry into and exit from the plant do not reveal the time actually worked by said Steve Anderson and Lillian Socia, or either of them, or of other employees, and deponent states that said Steve Anderson and Lillian Socia and likewise the other employees of The Mount Clemens Pottery Company in said department, to deponent's personal knowledge, did not immediately after punching the time clock engage in activities and services on behalf of The Mount Clemens Pottery Company, nor did the said Steve Anderson and Lillian Socia and other employees continue to be engaged in such activities until the hour and minute when they punched out their time clock card at the close of work.

Deponent further states that as foreman of the brushing and dipping department of The Mount Clemens Pottery Company he instructed Steve Anderson and Lillian Socia and other employees in the said department not to commence work until the established starting time, and further instructed them to cease work at the established stopping time.

Deponent further says that he did not suffer or permit employees to work in violation of such instructions.

Deponent further states that said Steve Anderson and Lillian Socia and likewise other employees were not

charged with any duties for periods he or they were in the plant but not working prior to the start of work or subsequent to the close of work.

Further deponent says not.

Ernest Harms, Jr.

Subscribed and sworn to before me this 22nd day of January, 1942.

Eleanor Schulte,
Notary Public, Macomb County, Mich.
My commission expires 10-25-42.

State of Michigan,
County of Macomb—ss.

WILLARD STIEF, being first duly sworn, deposes and says that he is and at all time since October, 1938, has been foreman of the glost unloading department of The Mount Clemens Pottery Company, and that he knows of his own personal knowledge and can competently testify that Floyd Pearl has been during such period employed in said glost unloading department, and that this deponent is familiar with the hours worked by said Floyd Pearl and all other employees in said department.

Deponent further states of his personal knowledge that said Floyd Pearl and likewise the other employees of The Mount Clemens Pottery Company in said department were not engaged in work in The Mount Clemens Pottery Company's employment and services during all the times shown on the time clock cards as indicating the hour and minute when the employee checked into and out of the plant each day.

Deponent further states of his own knowledge that the hours printed on the time clock cards indicating the time of entry into and exit from the plant do not reveal the time actually worked by said Floyd Pearl or of other employees, and deponent states that said Floyd Pearl and likewise the other employees of The Mount Clemens Pottery Company in said department, to deponent's personal knowledge, did not immediately after punching the time clock engage in activities and services on behalf of The Mount Clemens Pottery Company, nor did the said Floyd Pearl and other employees continue to be engaged in such activities until the hour and minute when they punched out their time clock card at the close of work.

Deponent further states that as foreman of the glost unloading department of The Mount Clemens Pottery Company he instructed Floyd Pearl and other employees in the said department not to commence work until the established starting time, and further instructed them to cease work at the established stopping time.

Deponent further says that he did not suffer or permit employees to work in violation of such instructions.

Deponent further states that said Floyd Pearl and likewise other employees were not charged with any duties for periods he or they were in the plant but not working prior to the start of work or subsequent to the close of work.

Further deponent says not.

Willard Stief

Subscribed and sworn to before me this 22nd day of January, 1942.

Eleanor Schulte,
Notary Public, Macomb County, Mich.
My commission expires 10-25-42.

State of Michigan,
County of Macomb—ss.

AGNES E. BENBENNICK, being first duly sworn, deposes and says that she is Office Manager of The Mount Clemens Pottery Company and in charge of payroll records of the company and the keeping thereof.

Deponent further says that since May, 1934, and prior thereto, employees of the Payroll Department of The Mt. Clemens Pottery Company, under deponent's direction, have followed the practice of computing each morning the number of hours worked by each production employee during the preceding day, and such computations are then and there written on each clock card of each such employee and returned to the racks before the next punching period, so that each production employee, whenever he picks up his time clock card, has before him a record as to the number of hours he is given credit for having worked on each preceding day of the pay period.

Deponent further says that she has for many years last past had charge of payment of employees, and that at no time has she received any objection to the effect that any employee claimed he worked longer hours than he was given credit for on the time clock cards.

Deponent further says that in November, 1939, she explained to an inspector of the Wage and Hour Division of the United States Department of Labor, who was then examining the payroll records of The Mount Clemens Pottery Company, the method by which said company computed the number of hours worked each day by each of its production employees, and said inspector made no objection thereto.

Deponent further says that the time clock cards of the production employees of the said company show that all

of said employees entered the plant at various times from fourteen minutes to starting time up to starting time, and likewise left the plant at various times between the stopping time and fourteen minutes thereafter.

Further deponent says not.

Agnes E. Benbennick

Subscribed and sworn to before me this 22nd day of January, 1942.

Eleanor Schulte,
Notary Public, Macomb County, Mich.
My commission expires 10-25-42.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

(Filed Jan. 27, 1942)

At a session of said Court held in the Federal Building, in Detroit, Michigan, the 26th day of January, 1942.

Present: Hon. Frank A. Picard, District Judge.

The above entitled cause having come on to be heard on motion of plaintiffs for summary judgment and counsel having been heard and the Court being fully advised in the premises and upon due consideration, it is hereby

Ordered, that the said motion for summary judgment be and the same is hereby denied.

Frank A. Picard,
District Judge.

ORDER

(Filed Jan. 28, 1942)

At a session of said Court, held at the Federal Building in the City of Detroit, County of Wayne, State of Michigan, on the 28th day of January, A. D. 1942.

Present: Honorable Frank A. Picard, District Judge.

This matter came on for hearing before the Court on the following motions:

First, Motion of the plaintiffs for Summary Judgment,

Second, Answer of the Defendant, Mt. Clemens Pottery Company to Motion for Summary Judgment, and

Third, Application of both parties to refer the issues of fact to a Master for his investigation, report and decision.

Both parties having, by counsel argued the first motion, the Court, upon due consideration thereof, finds as follows:

First, The Motion of the plaintiffs for Summary Judgment at this time and based upon the affidavits filed in support thereof, is denied without prejudice however, to the filing of a new Motion for Summary Judgment after the Special Master appointed herein shall make his recommendations as to the facts herein.

Second, This cause having come on to be heard further upon the application of all parties to refer the issues

of fact to a Master for his investigation, report and decision and it appearing to the Court that said cause is at issue and both parties are present, consenting to the reference and determination and computation of the monies owing the plaintiffs and the persons filing their Authorizations or Designations with the Clerk of this Court.

It Is Therefore, Ordered, Adjudged and Decreed that said cause with its pleadings, evidence and exhibits be referred to Donald L. Quaife to hear and determine the issues of fact arising in this cause; and It Is Further Ordered, Adjudged and Decreed that said Donald L. Quaife shall begin the taking of testimony, examination of the time clock cards, payroll records and receive in evidence such other oral or written testimony as may be proper in the premises on or before February 9, 1942; that said Donald L. Quaife shall expeditiously conduct said hearings and make his report including his findings of fact and conclusions of law thereon to this Court by the 1st day of April, 1942, and the same shall be filed to wait the further action of this Court. The fees and expenses of the said Master shall be filed with the Clerk of this Court and shall be included in the costs herein, the same shall follow and be assessed in accordance with the further order of this Court.

Frank A. Picard,
United States District Judge.

SUPPLEMENTAL ORDER

(Filed Jan. 29, 1942)

At a session of said Court held at the Federal Building in the City of Detroit, County of Wayne, State of Michigan, on the 29th day of January, A.D. 1942.

Present: Honorable Frank A. Picard, District Judge.

This matter came on for hearing before the Court on the following motions:

First, Motion of the Plaintiffs for Summary Judgment.

Second, Answer of the Defendant, Mt. Clemens Pottery Company to Motion for Summary Judgment, and

Third, Application of Plaintiffs to refer the issues of fact to a Master for his investigation, report and decision.

Both parties having, by counsel argued the first motion the Court, upon due consideration thereof, finds as follows:

First, The Motion of the plaintiffs for Summary Judgment at this time and based upon the affidavits filed in support thereof, is denied without prejudice however, to the filing of a new Motion for Summary Judgment after the Special Master appointed herein shall make his recommendations as to the facts herein.

Second, This cause having come on to be heard further upon the application of the plaintiffs to refer the said

cause to a Master for his investigation, report and decision and it appearing to the Court that said cause is at issue and both parties are present, consenting to the reference and determination and computation of the monies, if any, owing the plaintiffs of the persons having filed their Authorizations or Designations with the Clerk of this Court.

It Is Therefore Ordered that said cause with its pleadings, evidence and exhibits be referred to Donald L. Quaife as Special Master to hear the parties and to take testimony with respect to the issues as framed by the pleadings herein, and to report his findings of fact and conclusions of law thereon to this Court; and It Is Further Ordered that said Donald L. Quaife shall begin the taking of testimony, examination of the time clock cards, payroll records and receive in evidence such other oral or written testimony as he may deem proper in the premises on or before February 9, 1942; that said Donald L. Quaife shall expeditiously conduct said hearings and make his report including his findings of fact and conclusions of law thereon to this court by the 1st day of April, 1942, and the same shall be filed to wait the further action of this Court. The fees and expenses of the said Master shall be filed with the Clerk of this Court and shall be included in the costs herein, the same shall follow and be assessed in accordance with the further order of this Court.

This order supersedes the order heretofore entered by this Court on the 28th day of January, A.D. 1942.

United States District Judge.
Frank A. Picard,

DESIGNATION

(Filed Jan. 30, 1942)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, and the named plaintiffs in the above entitled action, to act as plaintiffs in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Irene Nocker
Irene Miller
Aletha Thomas
Stan Holmes, Jr.
Samuel Kozalmann
Aleck Mokanyk
Nick Mokanyk
Norman Gamn
Ethel Copeland
Agnes Lengyel
Dorothy Herpel
Dorothy Kendall
Margaret Williams
Alfred Compare
Ray Willey

DESIGNATION

(Filed Feb. 10, 1942)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083 thereof and the named plaintiffs in the above entitled action, to act as plaintiffs and representatives for the undersigned in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of our claims against The Mt. Clemens Pottery Company for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Bill Behnke
Ernest Glawe
Alice Stoll
Albert Thomas
Thelma Hampton
Robert Green
Paul Siewart
Melvin Bobcean
Eric Sopha
Julia Kudla
Antoinette Kudla
Carl Sievart
Mary Erz
Helen Boseak
Aleck Mokanyk
Arthur Meitz
Florence Madus
Virginia MacLeod
Florence Miller
Dorothy Strong

REPORT OF SPECIAL MASTER

(Filed Mar. 23, 1943)

To the Honorable Frank A. Picard, District Judge:

This is an action for alleged violation of the Fair Labor Standards Act of 1938 (popularly known as the "Wage and Hour Act"), involving principally the question of whether the company has paid its employees for overtime work in accordance with the law. The plaintiffs are a labor union and seven employees or former employees of the defendant, Mt. Clemens Pottery Company, all of whom are members, and some of whom are officers, of the said Union. The suit is brought by plaintiffs for themselves and on behalf of all employees similarly situated. By order of the court entered June 13, 1941, those employees desiring to be represented by the plaintiffs pursuant to Section 16(b) of the Act, were required to sign and file with the court written designations authorizing such representation. Pursuant to said order, nearly three hundred employees or former employees of the Pottery Company have filed designations authorizing plaintiff Union to represent them.

The defendant Mt. Clemens Pottery Company (hereinafter referred to as "Pottery Company" or simply "Company") is a Michigan corporation engaged in the manufacture of dinnerware, with a plant and offices located at Mt. Clemens, Michigan. The Pottery Company is a wholly owned subsidiary of the other defendant, S. S. Kresge Company (with the exception of certain qualifying shares owned by directors). It is claimed by plaintiffs that within the meaning of the Act the Kresge

Company is an employer of persons primarily employed by the Pottery Company and is liable to them for any violations of the Act.

A number of violations of the Fair Labor Standards Act are charged in the compliant, the principal one being the alleged failure of the company to credit its employees with all the time they worked, thus depriving them of the extra compensation for overtime required by the law. As set forth in paragraph 7 of the complaint, the claim is that the time clock records of the employees were deliberately falsified by the company, employees being compelled to work fourteen minutes in advance of the time shown on the time clocks in the morning of each working day, ten minutes after the time shown on the clocks at lunch, fourteen minutes extra at the beginning of the afternoon, and fifteen minutes extra on quitting work. It is alleged that since October 24, 1940, the company has required its employees to work an extra forty minutes per day or approximately 3¼ hours per week, in addition to the forty hours shown on the time clocks erroneously maintained. The charge is essentially one that the time clocks were deliberately set incorrectly by the company to cheat its employees out of credit for working time. A related allegation, in Paragraph 5, is that since October 24, 1940, the company has been working its employees approximately 45 hours per week without paying for overtime. Other violations of the Act charged by the complaint are the payment of sub-minimum wages, 10% being deducted from the minimum statutory pay agreed to be paid to new employees; the requirement that certain women employees doing decal work are required to work at home without compensation; and the action of the company's foreman Harms in falsifying records of forty female employees by punching out their time cards sixty-one minutes before they stopped work. The complaint claims damages in the amount of $100,000, asking for

judgment in that amount, plus the allowance of a reasonable attorney's fee.

Following the filing of the complaint, a considerable number of motions were filed and other preliminary proceedings taken, which resulted, among other things, in the filing by plaintiffs of two successive bills of particulars. These, together with explanatory statements of counsel in open court, have resulted in amplification and clarification of the charges in the complaint. The claim of homework was dropped*, as was the claim that the time card records were false; instead, it was claimed that the time cards (with the exception of one type of situation hereafter indicated) accurately reflected the work done by the employees, but that the company did not compute the working time of its employees or pay them in accordance with the time card records. The amended Bill of Particulars added claims of "charity work" and "unauthorized deductions," and in addition contained certain claims which have not been particularly pressed on the trial. Without going into a detailed analysis of the bill of particulars and related proceedings, it is sufficient to state that the following fairly well defined claims of plaintiffs were presented to the court at the time of trial, and evidence was submitted upon them:

1. That all employees of the Pottery Company worked approximately fifty-six minutes more time per day than they were given credit for by the company, pursuant to a system under which they were required to report for work at the beginning of each shift, fourteen minutes prior to the time which the company called their starting time, to work fourteen minutes beyond the company-established quitting time for lunch, and to follow the same procedure on the second half of the shift.

*It may be noted that the only reference to homework in the testimony was the volunteered statement of one of plaintiffs' witnesses that she was not permitted to do decal work at home (R. 1850).

2. That, in any event, all the time spent by the employees from the time they punched their time clocks in until the time they rang out constituted working time, but the company did not credit them with the full amount of this time.

3. That all employees were required to do what is known as "charity work," including such work as cleaning and oiling machinery, without compensation therefor; and that, in some cases, this work was done outside the time shown on their time cards, so that they were not even credited with the time thus spent.

4. That unauthorized deductions were made from the wages paid to employees of the Pottery Company to pay for tools and equipment used in the company's manufacturing operations.

5. That unauthorized deductions were made from the pay of certain employees to be used to make up the wages of another employee, referred to as the "invisible man."

6. That all women employees were paid wages below the statutory minimum requirements.

The answer of the defendant Pottery Company contains a general denial of all claims of violation of the Act made by plaintiffs; and in addition certain affirmative defenses are interposed, which can be summarized as follows:

1. That all claims of the individual plaintiffs and those represented by plaintiff Union for all periods prior to November 14, 1939, were settled by an accord and satisfaction entered into shortly after that date.

2. That practically all of the plaintiffs and the represented employees were paid on a piece work basis, and

that the law does not require that such workers be paid overtime at one and one-half times their average hourly rate, as contended by plaintiffs.

3. That the plaintiffs and represented employees are estopped from maintaining this suit by their acquiescence and failure to object concerning the practices complained of.

4. That the plaintiffs and represented employees are bound by acceptance of an alleged ruling of the Wage and Hour Division at the time of an inspection of the Pottery Company in November, 1939, approving its practices as in compliance with the Act, which practices have been continued unchanged.

5. That employees took frequent recesses during the day, with the permission of the employer, which time was credited as working time and which should be offset against any working time which may be found not to have been credited to them.

6. That the interstate commerce provisions of the Act are not shown by the complaint to have been satisfied.

7. That this suit was not brought in good faith, but rather as an incident to a campaign to organize the Pottery Company, and constitutes an abuse of process of the court.

8. That extra compensation was paid by the company to employees twice a year, which payments should be offset against any recovery to which plaintiffs may otherwise be found entitled.

9. That the plaintiff Union has not been properly authorized by its constitution or membership to institute this suit on behalf of employees of the company.

There is a question as to whether the last two defenses listed above have been raised in the answer. In addition, certain defenses have been made since the trial based upon the alleged insufficiency of the evidence.

The answer of the defendant S. S. Kresge Company claims that it is not an employer within the meaning of the Act.

A lengthy trial was had before the Master upon the issues involved in the case, the typewritten transcript totaling more than 3,500 pages. During the course of the trial, certain claims not raised in the pleadings or opening statement of counsel were brought up by plaintiffs. These included the claim that office workers were not compensated in accordance with the Act (it does not appear that any of the plaintiffs or represented employees are office workers); that the company violated the child labor provisions of the Act; that if in any seven consecutive days more than the statutory period is worked the company must pay overtime, regardless of the amount of time worked during the established work week; and that company meetings were held without crediting the employees with the time spent in attending them. Upon objection, the Master held that in the absence of amendment of the pleadings testimony should not be taken upon these issues. The testimony submitted by plaintiffs at the trial consisted largely of that of eight employees or former employees of the company, affiliated with the plaintiff Union, while that of the Pottery Company consisted primarily of the testimony of foremen and managerial representatives of the company. In addition, there was expert testimony on each side as to industrial customs and practices, and an inspector of the Wage and Hour Division of the United States Department of Labor testified for plaintiffs. Thereafter, elaborate briefs were

submitted by all parties, which have been carefully studied.

In passing upon the issues raised in this case, I think it most convenient to put my report in opinion form, with a list of numbered findings of fact and conclusions of law appended. Some of the defenses are of a more or less preliminary character, not involving directly the question of violation of the substantive provisions of the Act; and these, in my opinion, can be most conveniently disposed of at the outset, clearing the way for focus upon the major issues in the case.

ISSUES NOT INVOLVING SUBSTANTIVE PROVISIONS OF ACT

A. Interstate Commerce

It is urged by the defendant Pottery Company that the case does not even come under the Act, because the complaint does not show on its face that the interstate commerce provisions of the Act have been satisfied. The Fair Labor Standards Act is somewhat unusual in the field of federal regulation under the interstate commerce power in that it sets up an employee, rather than employer, test for determining its coverage. Kirschbaum v. Walling, 316 U.S. 517, 86 L. Ed. 1054; Walling v. Jacksonville Paper Co., 87 L. Ed. 393 (Supreme Court Opin. No. 336, decided Jan. 18, 1943). It applies in terms to employees "engaged in commerce or in the production of goods for commerce." It is further provided (Sec. 3(j)) that an employee shall be deemed to have been engaged in the production of goods if he was "employed in any process or occupation necessary to the production of goods." "Commerce" is defined in substance to mean interstate commerce. Sec. 3(b).

There can, I think, be no question but what on this record the employees involved in this suit were engaged in the production of goods for commerce, within the meaning of the Act. Practically all of the raw materials used by the company in the manufacture of dinnerware come from outside the State of Michigan. Approximately fifty per cent of the finished product, by dollar volume, is sold to the parent Kresge Company on direct order from its stores located throughout the country, and shipped to them direct. The remaining fifty per cent is sold and shipped to other buyers outside the state. There is no showing that any part of the business of the Pottery Company is of a separable, intrastate character. The employees suing or represented here were all employed in the plant of the company, and must all be deemed to have been employed directly in the production of goods for interstate commerce or in occupations necessary thereto. See Kirschbaum v. Walling, supra; Warren-Bradshaw Drilling Co. v. Hall (Supreme Court Opin. No. 21, 1942); Walling v. Jacksonville Paper Co., supra.

The Company's contention is that the complaint does not specifically allege that the plaintiffs or represented employees are engaged in the production of goods for interstate commerce, but rather that they are "engaged in interstate commerce," which they are not. It may be that the language used in the complaint is somewhat inappropriate to express the thought involved, which seems resaonably clear from other allegations (Paragraphs 1 and 8) which suggest (though not expressly stating) that the employees are engaged in production for commerce. However, in view of those allegations, the clear record on the point, and the liberal rules of construction of pleadings which prevail (see Rule 15(b) of Federal Rules Civil Procedure relating to amendments of pleadings), it would be overly technical to hold that the complaint should be dismissed because of some inaptness of expression in the allegation.

B. Liability of Kresge Company

An issue is presented as to whether the defendant S. S. Kresge Company is an employer within the meaning of the Fair Labor Standards Act. The Act defines "employer" to include "any person acting directly or indirectly in the interest of an employer in relation to an employee." The evidence here as to the relationship between the two companies is restricted almost entirely to the testimony of Charles E. Doll, Vice-President and General Manager of the Pottery Company. From this, it appears that the Kresge Company owns all of the stock of the Pottery Company, except for qualifying shares, that the officers of President and Treasurer of the two companies are held by the same person, and that seven of the ten directors of the Pottery Company are also directors of the Kresge Company. The Kresge Company also purchases approximately one-half of the output, by dollar sales volume, of the Pottery Company.

According to Doll's testimony, however, there is no interference by the Kresge Company in the internal management of the Pottery Company. According to him, he as general manager alone controls the labor and employment policies of the company, the sale of the finished product, and the adoption of new machinery and new manufacturing processes. Report is made by him to the directors of the company concerning operations at the meetings of the board held three or four times a year (sometimes at the Kresge offices in Detroit and sometimes in Mt. Clemens), at which the operating policies are considered; but, otherwise decisions on these matters are made by him. Doll's compensation is received from the Pottery Company, and dividends upon Kresge stock owned by him constitute the only money he receives direct from the Kresge Company. The record is barren of any proof of direct domination by the Kresge Company, disregard

of corporate formalities, or under-capitalization of the Pottery Company, rendering it unable to respond to a judgment for plaintiffs here. Plaintiffs claim that domination is proved by evidence of a sign on the water tower of the Pottery Company plant, which according to the witness Dacko read, "Owned and operated by S. S. Kresge Company," and which was recently painted over. However, a photograph of the sign in question in a C.I.O. news organ and the testimony of the plant engineer, indicating that the sign can still be read through the covering paint, show conclusively that the sign in question read, "Mt. Clemens Pottery Co., Owned by S. S. Kresge Co." and did not contain the word "operated." The claim which has been reiterated by plaintiffs that negotiations over labor problems were carried on at a meeting held between the President of the Kresge Company and certain employees of the Pottery Company is not supported by any evidence, unless denials are to be considered evidence.

The question therefore presented is whether where one corporation owns all the stock of another and the two have interlocking officerships and directorates, but there is no additional evidence of domination or other facts justifying the conclusion that the relationship between them is one of principal and agent, the parent company is an employer of persons primarily employed by the subsidiary, within the meaning of the Act. Plaintiffs cite no applicable authorities, and there appear to be no decisions on the point arising under the Fair Labor Standards Act. However, there are several decisions of appellate courts arising under the National Labor Relations Act, which contains an almost identical definition of the term "employer." It appears that the more recent cases on the question hold that in the absence of additional circumstances the parent company is not an employer. Press Co. v. N.L.R.B., 118 F. (2d) 937 (Ct. of Ap., D.C.):

N.L.R.B. v. Timken Silent Automatic Co., 114 F. (2d) 449 (C.C.A. 2). The former case (in which one judge dissented on the ground that the record did in fact establish the domination required) contains the most complete discussion of the question. Cases holding the parent company liable were there distinguished on the ground that they prove something more than the mere holding of the controlling stock ownership. Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 83 L. Ed. 126; N.L.R.B. v. Lund, 103 F. (2d) 815 (C.C.A. 8); N.L.R.B. v. Pennsylvania Greyhound Lines, 303 U.S. 261, 82 L. Ed. 83); Labor Board v. Hearst, 102 F. (2d) 658 (C.C.A. 9). While a good argument can perhaps be made that as a matter of statutory policy a parent corporation should in all cases be held jointly liable with its subsidiary for violations of the Act, it would seem that Congress would have expressly so stated if it had intended that result.

Accordingly, I conclude the Kresge Company is not an employer under the Act, and that the complaint should be dismissed as to it. It would seem that the issue is of relatively little practical importance, since it seems probable from an affidavit of its treasurer on file that the Pottery Company is amply able financially to respond to any judgment which may be obtained by plaintiffs here.

C. ESTOPPEL

It is contended by the Pottery Company that the plaintiffs are legally estopped to maintain this action, because of acquiescence on the part of them and the rest of the employees over a period of years in the practices of the company with respect to computation of time. Concerning the principal claim involved in this proceeding—the company's method of computing working time—it is pretty clear from the record that the employees, although well acquainted with the company's practices, did not

object or complain about them to the management prior to the institution of this suit. It is not necessary here to rely upon the testimony of the general manager and the foremen to that effect. Most of the plaintiffs' witnesses, including practically all who testified on the subject, admitted that they had made no complaints to the company. They further admitted that they knew of the system followed by the company in computing time, that they could see each day on their time cards the hours credited to them for previous days' work, and that the system had been in effect without change for several years prior to this suit. Some of the employees testifying stated that they did not complain because of fear of discharge; however, they testified that they felt free to complain about other matters relating to computation of their pay, which sometimes resulted in adjustment and for which they were not discharged or censured. The claim is made that the employees made a collective protest through the medium of a strike about the time this suit was instituted, but there is no clear evidence that any demands relating to the Wages and Hours Act were made upon the management in connection with the strike. Finally, there is some contention that the witness Dacko protested by walking out one day when asked to work overtime. While the incident referred to occurred subsequent to commencement of this action, it seems clear from Dacko's testimony that his objection was to working more than eight hours in a single day (which he recognized was not forbidden by the Act) and not to any violation of the Act. On the other hand, the witness Metz stated that the thought that he was working more time than the company allowed him never occurred to him prior to this suit (R. 975).

However, the clear weight of authority, in my opinion, is to the effect that the defense of estoppel is not good legal defense to an action under the Fair Labor Standards Act. Obviously, one of the primary purposes of the

Act was to protect employees subject to its provisions against entering into agreements as to their wages and hours of employment deemed by Congress to be unduly detrimental to their interests, as a result of their assumed inferior bargaining position. Prior to its adoption, wages and hours were regulated by agreement, and if entry by employees into an agreement inconsistent with the Act were held to constitute a bar to a civil action for its violation, the result is to relegate them to their position under private bargaining outside the Act, and to make it only a moral admonition to employers. And, if direct entry into agreement constitutes no bar, how can acquiescence, failure to object, or conduct falling short of such action effect a legal estoppel?

The courts which have considered the question have adopted this viewpoint, and have held that even a signed statement by an employee incorrectly reciting facts which negative violation of the Act will not bind him. Johnson v. Dierks Lumber Co., 130 F. (2d) 115 (C.C.A. 8); Fleming v. Warshawsky, 123 F. (2d) 622 (C.C.A. 7); United States v. Morley Construction Co., 98 Fed. (2d) 781 (C. C.A. 2); Rigopoulos v. Kervan, 47 F. Supp. 576; Wilkinson v. Noland Co., 40 F. Supp. 1009. Thus, in the Morley Construction Company case, which involved a claim under the related Walsh-Healey Act, the court held void releases signed by employees stating that they had been paid the prevailing rates required by law, when in fact they had been paid lower rates, the court saying (P. 788):

> "The statute was designed to protect them against the economic pressure it was assumed they would be unable to resist, if offered a job. To this end it was as necessary to deny them the power to bargain away their privilege after they had performed their labor as before. * * * We are satisfied that the statute cannot be circumvented by so easy a device."

Of course, some possibility of damage to an honest employer is involved in such a holding, since no matter how faithfully he endeavors to comply with the Act he can never be sure of protection against a claim of violation thought up years later by an employee who has worked with apparent satisfaction. However, while not affording a basis for estoppel, agreement or acquiescence is not without legal significance, since it is important in connection with the problem of proof. Obviously, an employee who has been paid in accordance with his signed statements as to the number of hours he has worked and who claims in litigation that they were not correct is under some burden of explaining why he signed them, if untrue; and the same is true where the employee-plaintiff has worked for years without complaint, despite full knowledge of the law and the practices of the employer. In an otherwise doubtful case, such conduct may swing the scales of decision. This, I think, is the sense of the cases cited by defendant in support of its claim of estoppel. Mortensen v. Western Light & Telephone Co., 42 F. Supp. 319; Dollar v. Caddo River Lumber Co., 43 F. Supp. 822; Stein v. Gordon Bros., 43 F. Supp. 249.

The Master is further inclined to the view that under the principles of the above-cited cases, the Pottery Company's defense of an accord and satisfaction is not well taken. It may well be that even though a general release or acquiescence is ineffective as a bar to a civil action under the Act, the settlement of a bona fide dispute between the parties concerning its application does constitute a bar. Otherwise, the result is to discourage and handicap the parties in the settlement of controversies. In several cases, the defense of accord and satisfaction has been recognized. See Cissell v. Great Atlantic & Pacific Tea Co., 37 F. Supp. 913; Clour v. Jones, 42 F. Supp. 700. However, here the claim of accord and satisfaction is based upon receipts signed by employees for payment of unpaid overtime compensation, resulting from an in-

spection by the Wage and Hour Division. The company had originally averaged overtime over a two-week pay period, and when the Division pointed out that it should have been computed on the basis of single work weeks, adjustment was made with the employees affected. The initiative on this matter was taken by the Division, and it does not appear that there was any dispute over the matter between the employees and the company existing at the time, or any negotiations between them.

D. Inspection by Wage and Hour Division

A defense somewhat related to that of estoppel is that based upon the claimed approval by the Wage and Hour Division of the practice of the Pottery Company with respect to payment of wages and computation of hours under the Act, as a result of an inspection of the plant made in 1939. Plaintiffs objected to testimony on this point on the ground of immateriality and hearsay, but as the issue was raised in the pleadings testimony was taken subject to determination of the legal question after the trial. There is some divergence in the testimony submitted on the point. There is no question but what a thorough inspection was made and employees interviewed, and that the inspectors found the company's practices in error in respect to averaging work weeks in computing overtime, resulting in adjustment with employees for the past and modification of the practice in the future. However, the general manager, Mr. Doll, testified that beyond that the inspectors found nothing wrong with the company's practices, but instead complimented it upon the completeness of its records. The testimony of Mr. Reifin, one of the inspectors, does not entirely corroborate this. According to him, he advised Mr. Doll as to the requirements of the law generally, telling him that any time the employees were required to be on the premises was working time; that he advised him of

probable liability under Section 16(b) of the Act and against a "continuation" of any practice where employees are not credited with hours worked; and that he told him it was improper to dock employees fifteen minutes for tardiness unless they were also paid fifteen minutes' time if they worked three or four minutes late, and also found fault with the method of computing time of office workers. However, although plaintiffs seem to argue to the contrary a careful study of Mr. Reifin's testimony indicates that he nowhere states he told the company it was working its employees before and after the established shift periods for which they were credited. This is further evident from a letter written by him to the company on September 8, 1941 (after institution of this suit) in which he referred to information coming to the office that the company was working its employees fourteen minutes in the morning without paying therefor. The letter does not state that the Division finds that the practice was being followed or that it made any such finding in the course of the inspection two years before. It seems likely that if such finding was made as a result of the inspection, the company would have been informed of it or other affirmative action taken, as it seems obvious, as recognized by Mr. Reifin, that such conduct would constitute wilful and flagrant violation of the Act.

However, resolution of this factual controversy is unnecessary, in my opinion, because I am convinced upon further consideration of this question that the inspection of the Wage and Hour Division is irrelevant to the decision of this case. I am unable to understand the theory upon which defendant claims it to be relevant. A finding by the Wage and Hour Division that the company had been guilty of no violation of the Act could no more bind the employees in a civil suit than its conclusion that a violation had occurred would be proof

of the company's guilt. The finding which the Division is claimed to have made was not an interpretation of the Act, which might be entitled to considerable weight in aiding the court to decide the correct interpretation, but rather merely a finding of facts in a particular case. The theory of defendant seems to be that the employees in some way accepted a ruling of the Division approving the company's practices, but there is no evidence to show that the employees were ever informed of the statements made by the inspectors to Mr. Doll, which constitute the only ruling referred to. Consequently, the Master is of the opinion that the claim originally made by plaintiffs that the results of the inspection are irrelevant here is well taken.

E. Authority of Union to Sue

Another defense of the Pottery Company which must be considered involves the claim that the plaintiff Union cannot maintain this action because it has not been authorized, either by its constitution and by-laws or by a meeting of its members to bring it. Defendant, by motion, previously made the claim that the Union, as an unincorporated association, was not a proper party to act as an agent to bring suit under Section 16(b) of the Wage and Hour Act; but the court overruled the motion by its order of June 13, 1941, holding that the Union could represent persons filing written designations. This defense is repeated in the answer filed by the company. The present defense involves a somewhat different point, and would seem not to be foreclosed by the court's order. The claim previously made was that under the law it is not permissible for an unincorporated association to maintain suit as an agent pursuant to Section 16 of the Wage and Hour Act, regardless of whether it has been authorized by its membership to do so. The claim now made is that the Union has not been so authorized,

and, as decision of it depends on evidence, could hardly have been disposed of in advance of trial. (The claim is similar to the one frequently made that a corporate plaintiff has not been authorized by its charter or its board of directors to institute suit.)

However, examination of the answer fails to reveal that the defense in question was urged therein; and, in my opinion must be rejected as not having been raised by motion or responsive pleading, as required by Rule 12(h) of the Federal Rules of Civil Procedure. The company claims that it raised the issue by traversing the introductory paragraph of the complaint, which commences with the language, "Now comes the plaintiff." It would be stretching language too far to hold that such denial covers this defense. The defense is obviously a technical one since no member of the Union is here complaining about its institution of this suit; and, in view of that fact, I think that the company should be held strictly to its answer and this claim be deemed waived.

ISSUES RELATING TO SUBSTANTIVE PROVISIONS OF ACT

Assuming, therefore, that the plaintiffs are subject to the provisions of the Wage and Hour Act and have the proper status to bring this suit both for themselves and on behalf of the employees who have signed and filed designations, we come now to the question of whether the defendant Mt. Clemens Pottery Company has been guilty of any violation of the Act. The Act, of course, has two main objects, apart from its child labor provisions: (1) to set minimum wages; (2) to require extra compensation for employment time over a certain number

of hours per week. The declared policy of the Act is to eliminate conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers. In addition, it appears that the Act has an undeclared purpose, namely, to discourage employment for longer hours than forty per week and thus spread the work around.

Apart from exceptions which need not be noticed here, the minimum wage is set at 25 cents an hour for the first year after the effective date of the Act (October 24, 1938), and at 30 cents an hour during the following six years. Under Section 7 (a), the maximum limitations upon employment at straight time is set at a workweek of forty-four hours during the first year of its operation, forty-two hours during the second year, and forty hours thereafter, with the requirement that employment in excess of the specified hours must be paid for at not less than one and one-half times the regular rate of pay.

It may be noted here that the unit for purposes of overtime computations is the single workweek. Overnight Motor Co. v. Missel, 316 U.S. 572, 86 L. Ed. 1159; and under an administrative interpretation the same is true with respect to minimum wages, Wage Hour Manual (1942 ed.), p. 184. This works both ways; higher wages than the minimum or fewer hours of employment than the statutory period during one week cannot be offset by wages below the minimum or hours above the limitation on straight time the following week; on the other hand, wages can fall below the minimum for a given hour so long as the average for the week exceeds it, and more than eight hours can be worked in a given day without liability for overtime so long as the week's total falls short of forty.

The plaintiffs' claims of violation here involve both branches of the Wage and Hour Act. The principal is-

sue relates primarily to overtime, and involves the propriety of the company's method of computing working time of the employees, which the plaintiffs claim gave them credit for less time than they worked and was designed to cheat them out of overtime. There is also an incidental minimum wage angle to this claim, because those few employees who were purportedly being paid by the company at the exact statutory minimum were actually receiving less than the minimum if they were working longer hours than credited to them. In addition, a direct issue of minimum wages is involved in the claim that women employees were paid less than the minimum. With the other two issues, relating to unauthorized pay roll deductions and charity work, a serious question is involved of whether any claim properly referrable to the Wage and Hour Act has been presented by plaintiffs.

A. Computation of Working Time

Under the law, as stated, employees subject to its provisions are entitled to payment for their employment in excess of the designated statutory period at a rate not less than time and one-half their regular rate of pay. There is no question but what employees are entitled to full credit for the time they have worked. Obviously, however, difficult legal questions can arise in determining whether a particular activity of an employee constitutes employment time. While legal questions as to what constitutes working time are involved in the claim presented here, the principal issue is factual. Specifically, plaintiffs' claim of improper computation of such time has two aspects. First, there is the charge, indicated in the plaintiffs' pleadings and reiterated by counsel in arguments in open court, that the company cheated its employees out of approximately fifty-six minutes per day working time by requiring them to work fourteen extra minutes beyond the time credited to them at the start of the shift, on going out for lunch and returning therefrom, and at the

end of the shift. In the alternative, it is contended that even if that claim is not sustained, at least the full time the employees were in the plant as shown by the entries punched on the time clock cards should have been, but was not, credited to them, since they were required to go directly from the time clocks to their respective departments and immediately thereafter to work. Plaintiffs concede, and in fact rely upon, the accuracy of the time clock cards, with a limited exception to be considered under the heading of charity work.

On the other hand, the company claims that its employees were neither required nor permitted to commence work until the established starting time for their respective shifts, from which their working time was computed, nor to continue to work after the quitting time for lunch or at the end of the shift; and that in fact they did not do so. According to defendant, the employees were given a fourteen minute period to check in and out at the time clocks before and after each shift and in going in and out for lunch. It is claimed, however, that while they were permitted to come in fourteen minutes early, they were under no compulsion to do so, the only requirement being that they be at their place of work, ready to work, at the established starting time, and their time being their own until then.

In addition, it is contended by the company that even if it should be found that employees worked before and after the regular shift periods, no judgment can be rendered for plaintiffs because the amount of working time not credited to each employee can not be computed, except upon the basis of speculation and guesswork; and that there is no evidence in the record upon which a recovery for employees not represented here can be predicated; and that even upon plaintiffs' theory of computing time according to the time card entries no overtime was worked in many, if not most, weeks worked by its employees.

1. *Organization of Defendant's Plant and Background Facts in Regard to its Time-Keeping Methods.*

In order to appraise the testimony on the controversial issue thus present, some understanding of the organization and manufacturing processes of the Pottery Company and the undisputed facts relative to its methods of keeping track of its employees' working time is essential. The company is engaged exclusively in the manufacture of dinnerware, including cups, saucers, and dishes of various sorts for household use. It concentrates upon the low-priced trade, and accordingly makes use of mass production methods to a considerable degree. Its Mt. Clemens plant is the only one owned by it, and is the largest single plant in the industry.

Dinnerware consists essentially of a base of clay composition covered with a glass coating, to which decorations may or may not be applied, the whole being hardened by heat. In the manufacturing process followed by the defendant company during the period in litigation, the clay was first mixed with water and other materials in the so-called slip house, from which it emerges in a plastic or putty-like form. This material is then taken into the clay shop, a large department, where it is formed into the particular shapes of ware desired. This is done by a crew of three persons working together, known as the batterout, jiggerman, and finisher. The batterout rolls out the clay like a pie crust and places it on a mold. The jiggerman then puts it in a machine in which it is spun underneath a tool which he presses down upon it to form the desired shape of ware. After being baked in mangles to make it semi-hard, the rough spots are then smoothed off by the finisher, who also sponges its face. Of the three members of the crew, the jiggerman is the most skilled and highly paid employee, while the finisher is the least skilled, the position being filled with female employees. It appears that within recent years, the defendant has been installing automatic jiggering machines, manned by

a crew of 20 to 25 persons, to do the job done by the jiggerman, batterout, and finisher, and some of these machines were in operation during the period in litigation.

After being formed in the clay shop, the ware is then stacked in box-like conveyors known as "saggers" (the dimensions of which are about a foot and a half in each direction), which are transported on a conveyor belt and then loaded into cars, which in turn carry the ware through the bisque kilns. These are large continuous kilns in which the ware is gradually heated to a high temperature and cooled to make it hard. In this form, it is known as bisque ware, and is in a hard but rough condition.

After removal from the bisque kilns, the ware is taken to the brushing and dipping department, where the glaze coating is applied. This work again is done by a crew of three persons—brusher, dipper, and sponger. Dirt and other impurities are first brushed off, and the ware is then dipped in liquid glaze. Part of this dipping is done by hand and the remainder on large automatic dipping machines, approximately twenty feet in diameter which were being installed during the period in litigation and in which the glaze was applied by spraying. The final operation consists of sponging off the surplus glaze.

Following these operations, the ware is again stacked in saggers, which are transported along a large automatic conveyor system known as the glost belt to the glost kilns. The saggers are loaded by girls at loading stations, being temporarily pushed off the belt when empty by men in the department and put back on when filled. Near the glost kilns, the saggers are removed from the belt and placed in cars, which are transported gradually through the glost kilns, where the glaze surface is hardened by heat, the process being essentially the same as that in the bisque kilns already described. The saggers are then put back on the belt, and are moved along it to an unloading point. After inspection and grading, some of the ware is

packed for shipment in its undecorated condition as plain ware; the remainder is transported to the decorating department for decorating. The principal decoration applied is a floral or similar pattern, put on by the decalcomania process. In this process, girls first apply a varnish coating to the ware, then place thin sheets of paper on which the patterns are printed upon it and press them down with brushes to effectuate a transfer of the pattern to the ware. Afterwards, the ware is heated in small decorating kilns to fix the pattern permanently upon it. A second type of decoration which is sometimes applied consists of a thin gold stripe around the rim, which work is done by girls known as "liners." After decoration, the ware is then ready for shipping.

The Pottery Company employs an average of approximately 1200 persons. Altogether, there are approximately ten or twelve departments in the pottery plant, there being in addition to those mentioned several auxiliary departments, such as those in which molds and saggers are manufactured and glaze mixed. To a large degree, the operations are of a continuous nature, and material in process cannot be held over until the next day except at certain stages. Of the departments in the plant, four—the clay shop, brushing and dipping, glost belt, and decorating departments—are directly represented by the witnesses who testified for plaintiffs here.

More than 95 per cent of the employees in the plant engaged in production work are compensated upon a piece work basis. The rate is generally based upon the output of a group or crew, but in departments where employees work individually it is based upon the output of the individual. The incentive principle dominates the methods of payment adopted, so that, for example, the person performing the immediately preceding operation is not paid for pieces which fail to pass inspection, although imperfect ware is disposed of by the company at reduced prices.

The Pottery Company operates generally on a five-day week, with its workweek commencing on Wednesday. Departments variously operate one, two, and three shifts per day, with the bisque and glost kiln departments operating on a three-shift, seven-day, round-the-clock basis. Shifts in the different departments begin at different times during the morning, the established starting time, however, always being on the even quarter hour. The starting times and lengths of the shifts are varied somewhat, depending upon the demands of production.

The plant of the Pottery Company covers more than eight acres of ground, and the employees' entrance is at the northeast corner. Immediately adjacent to the entrance are cloak and toilet rooms for men and women, where outer garments are hung. Upon entering the production part of the plant, employees must pass and punch a time clock. There were two time clocks at different locations in the plant during practically all of the period in litigation (October, 1938, to April, 1941), a third one being added at one of the locations shortly before this suit was commenced. In checking in and out at the clocks, an employee removes his card from the rack, places it in a slot, pushes down a hand lever, and removes his card with the time recorded upon it and places it in another rack. On the average, approximately 25 employees can check in or out per minute in this way. After punching the clock, the employees proceed by a series of more or less defined aisles to their particular places of work. The distance from the clock to the place of work varies from 130 to 325 feet in the case of the glost kilns to 820 to 890 feet for the mold department.

The time clock system was first installed by defendant in 1933. Under the practice then adopted and continuously followed since, employees are not permitted to punch their cards more than fourteen minutes prior to the time the company calls the starting time. In computing

the time worked by the employees, the time cards are removed from the racks, and the time figured from the succeeding even quarter hour after employees ring in to the quarter hour immediately preceding the time they punch out. Thus, for example, an employee whose card is punched in at 6:46 A.M., out at 12:03 P.M., in at 12:58 P.M., and out again at 4:07 P.M. is credited with eight hours working time. The resulting figure is entered on the card in the right-hand column and the card returned to the rack. In computing overtime pay under the Fair Labor Standards Act (when overtime has been worked) the method which the company has followed is to divide the gross pay received by the employee in each workweek by the number of hours credited to him, and the resultant average hourly rate is multiplied by time and a half for the overtime hours. This is in accordance with the system prescribed by the Wage and Hour Division of the Department of Labor. (This, of course, is apart from the practice followed for a time of computing overtime on a two-week basis, which was the subject of adjustment.)

Due to the fact that the shifts in the different departments started at different times in the morning there was no whistle to signalize the commencement of work on most shifts, but clocks belonging to the employees were distributed liberally throughout the plant. Whistles were blown at 6:55 and 7:00 A.M. (which appears to have been the most common established starting time in the morning), and at several other times during the day.

At the time the Wage and Hour Act took effect, the policy was adopted by the company of keeping the working hours of its employees (as computed according to the company's system) below the statutory limitation for payment of straight time, as far as possible. It appears that the management felt that in view of competitive conditions, the company could not afford to pay large amounts of overtime. Prior to the passage of the Act, the

company had been officially on a forty-five hour week, although because of insufficient demand for its products and the policy of spreading the work among its employees in place of laying some of them off, the weekly working hours of the employees (as computed by the company) were generally considerably less than forty-five. When the Act became effective and each year thereafter when the statutory period for straight time was reduced to forty-two and forty successively, working schedules were re-adjusted and additional employees hired. The matter of compliance with the Act was frequently discussed at weekly foremen's meetings. The employees of the company were informed of the policy adopted by it, and were instructed when possible to keep their hours below the statutory period. The employees testifying on behalf of the plaintiffs were all very familiar with this policy of the company; as well as with the general requirements of the law. However, throughout the period in litigation, a few employees (averaging approximately ten to twenty per week) worked overtime, even under the company's method of computation, and were paid for such overtime in accordance with the system heretofore described.

Practically all of the workmen in the plant had certain duties to perform after arriving at their departments previous to the commencement of actual production, which has been referred to in the record as preliminary work and which is the subject of much controversy. Two kinds of activity are embraced under this heading: (1) personal preparations, such as putting on aprons or overalls, removing shirts, taping or greasing arms, putting on finger cots; (2) activity of a non-personal nature, involving the preparation of equipment for commencement of production work, such as turning on switches for lights and machinery, opening windows and assembling and sharpening tools. The nature of this work varied from department to department and from job to job within the department. For example, the preliminary work of the

dippers consisted generally of greasing their arms, putting on aprons or overalls and finger cots, and stirring the glaze solution. The girls engaged in decal work before starting on production would generally put on aprons, fill containers with varnish, bring ware to their benches, and clean their brushes. With the jiggermen, the principal preliminary job was to bend and sharpen a tool known as scrapper, although in addition they turned on switches, put on aprons, and on some occasions would have to get a pail of water for the finishers, get a board of clay, or move a truck. (There is some dispute about the latter activities, and it appears that other employees were regularly hired to get the clay and water.) In the glost belt department, it does not appear that the employees performed any preliminary duties, other than personal.

2. *Industrial Custom in Use of Time Clocks*

Before direct consideration of the testimony on the question of working time, since the time clock cards are the basis for plaintiffs' claim here and since it appears that there is a fairly definite system followed in industry generally with respect to time clocks, in the light of which defendant's system must have been established, a brief statement should be made as to the general custom of industry in recording employment time. The testimony on this point, which includes that of two witnesses familiar with such practices testifying for defendant and Mr. James Wishart, Research Director of U.A.W.-C.I.O., testifying for plaintiffs, is in almost complete agreement upon fundamental points. From this testimony, it appears that practically all manufacturing organizations in this region of any consequence employ a time clock system. The practice followed practically universally in such plants is to have certain established periods for working shifts and for lunch time, with the time clocks open for a fixed period of time (generally fifteen minutes or one-half hour) before and after the shifts, during which employees

can punch in or out. Usually, some employees will be waiting at the clock to ring in at the time they are opened; the remainder will come in gradually up to the time the shift starts. If an employee arrives early in his department, his time is his own until the regular starting time. The punched entries on the time cards show the time the employees enter and leave the production part of the plant, but do not show the time they commenced and stopped work; and the time worked is not computed directly according to these entries, since it is obvious that they will practically always show more time than is actually worked. Instead, if the punch-in time is prior to the beginning of the shift it is assumed that the employee started work at the regular starting time, and a corresponding assumption is made with respect to quitting time. (It appears that in some plants, time clocks are used in connection with a "job-card" system to show the actual time work is started and stopped on each successive job, but such a system is not involved in any way in this case.)

An example of the operation of the typical time clock system is found in the testimony of Earl Larimer, one of the employee-witnesses for plaintiffs, who stated that he was presently employed at a large Detroit plant operating under a collective bargaining agreement with the U.A.W.-C.I.O.; that he was there permitted to ring in a half hour before starting time; and that he regularly arrived and rang in a half hour early, waiting for the starting whistle to commence work and his time being figured from the starting to the quitting whistle.

It appears that, in the pottery industry generally, the use of time clocks is quite limited, the general practice being for the foremen in each department to record in a book the time, the number of hours worked each day by each employee. A similar system was followed by the Mt. Clemens Pottery Company prior to the installation of the time clocks.

3. *Evidence on Working Time of Defendant's Employees*

We come now to consideration of the evidence directly bearing upon the question of the time worked by employees of the pottery company. The testimony on this subject consisted of that of eight employees who worked in four different departments, testifying on behalf of plaintiffs, and of the foremen in these departments, and three managerial witnesses (Charles E Doll, and his two sons) testifying for defendant. No employees not connected with the plaintiff Union or the management were produced to testify by either side. The record evidence is limited to the time clock cards of the employees since November, 1939, and certain earning records and computation sheets based thereon.

a. *Summary of Testimony*

The testimony of plaintiffs' witnesses on the issue was largely confined on direct examination to the procedure followed by them and other employees in commencing work at the start of the shift. Their testimony was quite uniform that they (along with the rest of the department in which they worked) were instructed by their foremen to report in the morning at fourteen minutes prior to the particular quarter hour which the company recorded as their starting time; that they generally rang in their time cards at that time or shortly afterwards; that they then proceeded to walk directly to their department and started to work, attending first to their preliminary duties and then turning to production work. There is some variation on the testimony as to the time they rang in, some (e.g., Trombley) stating they rang in regularly at "fourteen to," while others (e.g., Dacko) stated they were not as prompt as that. On being shown their time cards, the witnesses admitted that they

did not ring in every day at exactly "fourteen to" and sometimes not until five on ten minutes later. There was also some testimony as to certain employees being criticized or sent home for arriving late, even though they arrived before the established starting time.

The foremen and the managerial witnesses (i.e., Charles E. Doll, Jr. and Sr.), on the other hand, testified that the employees were not instructed to report for work at "fourteen minutes to;" but rather stated that the instructions were that they should report at such time as to be in their department, ready for work, at the even quarter hour set for the start of the shift, and that they could ring in any time after "fourteen to." They further testified that production work was not commenced until the established starting time (except in rare instances where employees may have jumped the gun a minute or two) and frequently not until considerably after that time in cases where a crew had to be assembled. It was conceded that in order for employees to be in their departments ready for work by the starting time, it was necessary for them to punch the time clock some minutes previous; and, while an employee ringing in at 7:00 A.M. sharp, for example (where 7:00 o'clock was the established starting time), was given credit from that time as a matter of accounting convenience, he was considered late if he did not arrive at his place of work until one minute or more after 7:00. As hereafter noted, the company witnesses claimed that the employees arriving early largely spent their time in purely personal activities such as visiting.

It was agreed by witnesses for both sides that the time spent in walking from the time clocks to the department was not considered working time by the company and took place prior to the regular starting time, except in rare instances. There is considerable dispute as to the amount of time spent in so walking, however. Of course,

this would depend upon the distance to the particular department. In the case of the glost belt department, one of the nearer departments, employee and company witnesses are agreed the time required was one or two minutes. The estimates of walking time are also in substantial agreement for the brushing and dipping department at about two minutes, with the exception of Anderson, who originally placed it at half a minute. In the case of the clay shop, one of the most distant departments, however, the estimates of employees ranged from one and one-half to three minutes, and of the foremen from six to eight minutes. Unfortunately, none of the estimates were based upon actual clocking of the time in transit.

With respect to preliminary work in the morning, the time required for this would vary with the different departments, with different individuals in the same department, and with the same individual on different days. The estimates of those employees who undertook to estimate the average amount of time taken up by each activity generally placed it at about two or three minutes each day; and according to their testimony it was done immediately upon arrival in the department. It is conceded by the company witnesses that the preliminary duties of a personal nature were supposed to be, and usually were, performed in advance of the established starting time. As to non-personal preparations, the testimony of the foremen in general was to the effect that these either were not done before starting time, or, if they were, occupied only a few seconds or a minute. (A possible exception is that of Starner, who estimated the average time, apparently for both types of preparations, in the clay shop at 1 to 3 minutes.)

There is a sharp conflict in the testimony as to the extent of visiting and other personal activities of em-

ployees prior to commencing work. Those of plaintiffs' witnesses who were asked about it denied that they were permitted to spend time in this way. The company witnesses, on the other hand, testified that most of the time of employees after arriving in the department in advance of the regular starting time was spent in conversation and in such activities as stopping at the drinking fountain or lavatory, relaxing, and indulging in a certain amount of horseplay. The employees, it is said, would sometimes go into other departments to see their friends.

The employee witnesses did not testify generally as to the time production started. On cross-examination, Trombley estimated the time on the average at five minutes to 7:00, and Metz stated that in his department six or seven minutes to 6:00 would be about the earliest it could start, although he also stated that sometimes they did not get started until shortly before 6:00 and sometimes after 6:00. As above noted, the foremen testified that production work was not started until the established starting time.

With respect to the procedure followed at the other three times of day when the time cards were punched—going out for lunch, returning from lunch, and leaving at the end of the shift—practically no testimony was given by plaintiffs' witnesses on direct examination. On cross-examination, several of them admitted rather freely that they did not work fourteen minutes beyond quitting time, but instead frequently stopped production and cleaned up before quitting time, waiting until quitting time to leave. This is in line with the testimony of the foremen. About the only contrary testimony is that of Anderson, who stated that on some occasions his department worked five or ten minutes overtime at noon. Dacko also stated (R. 2086) that his department was generally kept till five

minutes after 12:00; however, his time cards show that on the great majority of occasions he checked out at the clock by five after 12:00 or earlier. Some claim is made by plaintiffs based on the fact that the glost belt department was required to work after 4:00 P.M. on the day when Dacko was discharged (in November, 1941), but there is no evidence that the company credited the employees in that department with working only until 4:00 o'clock on that day.

Testimony was given by Mr. Doll, Sr., and some of the foremen that during the day employees took considerable time off from production (estimated by Doll at 25 to 30 minutes per day) for relaxation, attendance to personal duties, and in engaging in such activity as mixing up soft drinks. It is claimed that the employees were permitted more latitude in this respect then in most plants, since they were paid on a piecework basis and could be counted on not to abuse the privilege. Plaintiffs submitted no testimony on this point, claiming it immaterial.

b. *Appraisal of Evidence*

(1) *As to Claim of 56 Minutes Extra Work Per Day*

In appraising the evidence, we first consider the claim repeatedly made that the employees of the Pottery Company worked approximately 56 minutes more per day than they were paid for. On this claim, analysis of the testimony is unnecessary, because an examination of the time clock cards themselves shows that the claim is not well founded. Plaintiffs have conceded that, with the exception of a limited type of case to be considered under the heading of "Charity Work," the time clock entries accurately reflect the time the employees came in and went out of the production part of the plant; and, in fact, they base their case upon them.

It is true that in many instances the cards of a particular employee show that over a considerable period of time he rang in regularly at approximately fourteen minutes before the time he was credited with starting. Thus, the cards of Nelson Luchtman and Clarence Burgess (cited in plaintiffs' brief as conspicuous examples) show that from November 14, 1939, to February 20, 1940, they rang in nearly every morning fourteen minutes early. Another example is that of Floyd Pearl, whose first eleven cards in evidence contain punched entries every morning at 6:46 A.M., with one exception when he rang in at 6:31. Plaintiffs argue that the consistency of this pattern can only be accounted for upon the assumption of a company practice to require them to report at this time.

Further examination of the cards, however, does not bear out this contention. To take the cards of the three individuals above-mentioned, for instance, we find many entries on the later cards of Luchtman and Burgess as of 6:51, 6:52, and 6:53 o'clock in the morning; while Pearl, although obviously an early arriver, came in far more frequently at 6:48 A.M. than any other time. Inspection of the cards of other employees in evidence reveals a similar situation, except that some were not so prompt in arriving—Dorothy May, for example, although usually arriving earlier, punched in on a substantial number of days at 5, 4, 3, and 2 minutes before the accredited starting time. Further evidence of this situation is seen in the results of an actual count, made by one of defendants' witnesses, of the ring-in-times on the cards of all employees of the Pottery Company reporting for the 7:00 A.M. shift (one of the largest shifts) on three widely scattered dates (Defendants' Exhibits 97, 98, and 99).

These exhibits reveal that the employees came in at a practically uniform rate for the first seven minutes the clocks were open, with a gradual diminution thereafter until by five minutes to 7:00 95 per cent of the employees had rung in.

The inconsistency between the time cards and the claim of 56 minutes extra work per day is much more apparent, however, in the later punched entries on the cards, particularly at quitting time for lunch and at the end of the day. Thus, the first eleven cards of Floyd Pearl referred to above are punched out at noon on the great majority of days within five minutes after the time to which his working time is figured, and this is generally true of the remainder of his cards.

The same is true of Earl Larimer, who checked in quite regularly approximately twelve minutes early in the morning, but checked out for lunch nearly every day within six minutes after the time credited by the company. On four cards of John Metz selected at random (November 7, 1939, March 26, August 13, and December 31, 1940), he checked out for lunch on morning and afternoon shifts on an average of approximately three minutes after the time credited to him. Again, in the case of Mary Sawicki, a striking situation appears with respect to the days she worked on the afternoon shift; her cards from November, 1939 to April, 1941, show that on approximately half of those days she punched out within one minute after the established quitting time at the end of the shift, and the average for the period is considerably less than three minutes.

The examples cited above are isolated, but they demonstrate that there was no practice in existence of working the employees of the Pottery Company fourteen minutes after the quitting time for lunch and at the end of the shift. While the cards of other employees show that time was spent in the plant beyond that credited to them in an amount frequently totaling 35 or 40 minutes, they do not show any definite pattern, either with different employees or the same employees, except that in general the "extra" time represented by the ring-ins is greater than with the ring-outs and that the employees were quite prompt in going out for lunch. They are definitely incon-

sistent with the claim of approximately 56 minutes extra work per day.

In addition to being inconsistent with the time clock cards, the claim is also not supported by the testimony submitted by plaintiffs, as there was no testimony that employees were kept working fourteen minutes after quitting time, but instead some of the witnesses (e.g., Metz and Larimer) stated that they commonly stopped and cleaned up on or before the quitting time.

(2) *As to Claim That All Time Between Punched Entries on Cards Was Working Time*

The claim that all the time between the punched entries on the time cards constituted working time involves more difficulty. It cannot be decided merely from an examination of the time clock cards, because they do not reveal whether or not the time between the ring-ins and the regular starting time was spent in working. While there is a legal angle to this issue to be considered later (involving principally the proper treatment of time spent in walking from time clocks to department and in personal preparations for work), the issue is primarily factual, since the claim depends upon a finding that the employees were required to go to their departments prior to the established starting time and to start to work at once, spending all of such advance time in work for the company, rather than having all or part of it available for their own purposes. There is, of course, a conflict in the evidence on this issue. In appraising the evidence, it must be remembered that the plaintiffs have the burden of proof, particularly where, as here, they have accepted with full knowledge and without protest over a period of years the practices of which they now complain. Full consideration of the direct testimony and the circumstantial evidence on the question leads me to the conclusion that the burden on this issue has not been sustained.

In the first place, the testimony of plaintiffs' witnesses itself is not entirely satisfactory and does not present the clear picture which would be expected or desired to find in their favor. Thus, some of the witneses confined themselves to stating that after punching their cards in the morning they proceeded directly to their departments, and did not even state that they started to work immediately after arrival. This is true of Dacko and Miss Freddle; and the latter in fact stated when questioned (R. 1826) that the red pencil figures at the right of her time cards represented her working time, which is what is claimed by the company.

The witnesses generally testified on direct examination that they came in at "fourteen to" in the morning. This is true of Trombley, Pe l, and Anderson; but their time cards show otherwise, and Anderson, in fact, stated on cross-examination that they couldn't get there at that time and that anyone who said he did was not telling the truth. Trombley's testimony exhibits considerable confusion as to the procedure followed in the morning. He originally stated that he punched in at 6:46, but on cross-examination said that the starting time was 7:00 o'clock and that he was not considered late if in the department by 7:00 (R. 317, 323). On another occasion, he testified that production work in his department was generally commenced about five minutes to 7:00; but this testimony is weakened by the fact that he had no recollection of a factory whistle which regularly blew at this time. Another witness, Mrs. Socia, stated that she was instructed to come in at fourteen to 7:00, but later (R. 1318) said that she and the other employees understood that if they got there by 7:00 they were not late.

Anderson, who was President of the Union and one of the principal witnesses, placed a very low estimate upon the time required for employees in his department to pass the time clock and walk to the department, estimat-

ing the former at 1½ minutes and the latter originally at ½ minute. It appears that there were approximately fifty employees on each shift in his department and about two hundred using the clock at the same time in the morning, which means about eight minutes would be required for all to pass the clock. As to the estimate of walking time, Mrs. Socia, who worked in the same department, placed it at two minutes, which is in line with the estimate of the foreman. Anderson further stated that the glost belt department was usually at work when he passed it in the morning, even when he came in at 6:31 or 6:46, which is inconsistent with the testimony of Trombley referred to above. Finally, Anderson testified (R. 722) that after the first strike at the plant (occurring at the time this suit was started) the employees were told they need only come in by 6:45 or 7:00, instead of fourteen minutes early. This seems inconsistent with the statements of other witnesses for plaintiffs that the system remained unchanged ever since they worked at the plant and with general arguments of plaintiffs as to the continuance of the system.

Similar difficulty is involved in connection with testimony that certain employees were criticized or sent home for coming in late, although they arrived before the established starting time. The principal incident of this sort concerned one Goldie Broniecki, who, according to the testimony of Mrs. Socia, was sent home for tardiness even though she arrived in the department at five to 7:00. Mrs. Socia testified that she was quite sure the incident happened between July and November, 1940, but upon being shown the time clock cards of Goldie Broniecki from November, 1939 to November, 1940, she conceded that it could not have occurred during that period and also stated it could not have occurred subsequent to November, 1940. Mrs. Socia further admitted that she herself had never been criticized for tardiness, although she punched in on occasions as late as 6:53. Mr. Anderson testified

to being criticized by his foreman for coming in late, but on the specific occasion mentioned he stated he came in after 7:00, and was therefore late by any way of figuring. Anderson also testified to an incident involving one Arthur Baxter, who he stated was reprimanded by his foreman when he came in to the department at ten minutes to 7:00, the department having been already working two or three minutes. If on the date in question the time clock was open only at fourteen minutes to 7:00, it seems clear that the department could not have been working at the time stated, since it would take much longer than one or two minutes for the employees to pass the time clock and get to the department alone. It may be that the starting time on the day in question was fifteen minutes earlier than usual, which would make Baxter late under either method of timekeeping.

With respect to the quitting time for lunch and at the end of the shift, there is, as already noted, little testimony by the employees that they worked after the quitting time recognized by the company in its computations. This being so, how can we know in cases where considerable extra time is shown on the cards that the employee did not remain after quitting time to visit with or wait for other employees or for other purposes of his own? In some instances, the witnesses said they stopped work and cleaned up substantially before quitting time. There would seem to be no basis on the record for the conclusion that the employees worked continuously up to the time they punched out.

In addition to the testimony directly relating to the procedure in coming in and going out, there is testimony of some of the witnesses on other points which reflects upon the reliability of their testimony. For example, Pearl testified that on many days during 1939, 1940, and 1941, his time card was many times punched out at 3:29

and in again at 3:31 P.M., in order to cheat him out of credit for a half hour's work, but upon being shown his cards from November, 1939, on he was unable to point out a single instance of that practice. Finally, the fact that the claim of 56 minutes extra per day made by plaintiffs is inconsistent with the record and testimonial evidence casts some doubt upon the correctness of the related claim.

It is impossible within the limits of this report to analyze all or even a large part of the extensive testimony submitted. The Master does not assume, nor intend to imply, that plaintiffs' witnesses were untruthful. It is not surprising that in a matter as bitterly contested as this and involving the problem of recollection of events over an extensive period of time, discrepancies and inconsistencies in the testimony occur. But, by the same token, the court should hesitate to rely upon testimony of an indefinite and often inconsistent nature, in the absence of corroborating circumstantial evidence. Here, however, circumstantial evidence seems to point in the other direction.

The most important circumstantial factor lies in the fact that in three of the four departments which were the subject of direct testimony here the employees worked in groups rather than singly and could not commence production work until the entire group arrived. Thus, in the clay shop, the jiggerman, batterout, and finisher worked as a unit, and it was admitted by plaintiffs that no member of the crew could work more than momentarily on production apart from the others. Consequently, an employee who arrived early had to wait for the other two before doing anything except preliminary work, and must have had time on his hands for visiting and other purposes. As approximately 200 persons passed the time clock at the beginning of each shift in this department,

it would take about eight minutes for all of them to pass the clock, and the last ones could not be in the department until shortly before 6:00 A.M. The witness Metz stated, in fact, that he sometimes did not get started until after 6:00, because they had to wait for one member of the crew to arrive. With the work done on the automatic jiggering machines likewise, a full crew had to be present before work could be commenced. In addition, the machine itself had to be started and the only testimony on the point is that of the foreman in the department, who claimed he started it each day exactly on the hour. (Another difficulty in connection with the clay shop arises from the fact that the department worked two shifts with a fifteen-minute interval in between. Under plaintiffs' theory, an overlapping of working time would result: thus, with an employee on the first shift checking out fourteen minutes early and his successor checking in fourteen minutes early, there is an overlap of thirteen minutes in working time. Yet, Metz testified (R. 927) that there was a shutdown of several minutes between shifts when work stopped.)

A similar situation prevailed in the dipping department, where the crew consisted of a brusher, dipper, and finisher, no one of whom would begin production work till the others arrived. Similarly, with the automatic dipping machines, virtually a full crew had to be present before they could be put in operation, and the machine had to be started in addition. With the glost belt department, this situation was even more striking. Plaintiffs' witnesses themselves testified that the operations on the belt were of such a nature that practically everyone in the department (numbering about 85 employees) had to be present before production work could be begun (and there were practically no preliminary operations in this department). The department operated in conjunction with another department, and approximately 200 employees passed the time clock on the shifts in the morning.

When the time of walking to the department is included and allowance is made for stragglers, it seems evident that this department could not get started much before the quarter-hour, and that those who came in early had time to themselves. It is not unnatural to suppose that the men in the department spent this time in conversation with the girls, as testified to by the foreman.

In the glost belt department, it was also necessary for the glost belt to be started before work could begin. However, although six witnesses testified on this point, their testimony is so conflicting as to when it was started and who started it that it does not help very much in deciding the matter. As I do not rely upon it, I will not attempt to analyze the testimony on this point.

The decorating department was the only one of the four covered by plaintiffs' testimony where the employees worked individually, and here the witness who testified did not say that work was started prior to the quarter-hour.

In the second place, the irregularity in the pattern of the punched entries on the time cards is at of least of negative effect in pointing against the claim advanced. If the cards showed, as was first contended, that the employees regularly punched in fourteen minutes early and out fourteen minutes late, the conclusion could at least be more readily drawn that the employees were required, rather than merely permitted, to come in and go out at that time. But, the cards reveal no such pattern. They show that some employees arrived consistently before others in the same department; that some spent more "extra" time in the plant at noon than at night, and that with others the converse was true. They also show considerable variation with the same individuals at different times. This is pointed out in plaintiffs' brief with respect to Mary Sawicki, who checked out at noon and night

seven minutes earlier on Monday than on Tuesday on the same card. Of course, one cannot say from the cards that she did not spend the extra fifteen minutes on Tuesday in working; but it at least seems less probable that such was the system where the entries on the cards do not follow a consistent pattern than if such pattern were shown.

In connection with this issue, a comparison between the time cards of the employees who testified and those of kiln foremen, boiler firemen, and pressmen in the slip house, whose departments are conducted on the basis of three consecutive eight-hour shifts per day, is instructive. The uncontroverted testimony is to the effect that in these departments the workmen coming in on the new shift replaced their predecessors, and that there was no overlapping of work between them. Furthermore, these employees did not have the same incentive as the others to "jump the gun," as they could not increase their pay by so doing. Nevertheless, their time cards show considerable "extra" time before and after the shift periods, just as with those of the witnesses who testified. They ofter reported 10 to 12 minutes, and sometimes 14 minutes, in advance of the starting time. (See Defendant's Exhibits 100, 101, and 102.)

Similar corroboration is found in the experience of industry generally in the use of time clocks. This is of particular importance in view of the contention of plaintiffs that The Mt. Clemens Pottery Company is the only plant in the country which follows the "gypping" system allegedly in use by it. Yet, it would appear from the evidence that the time clock cards of the defendant do not show any marked differences from those of other companies. Thus, defendant's witness Wright, who stated that in the course of labor relations work he had examined thousands of time cards in different plants (including those operating under collective bargaining contracts),

testified that in most plants in this region the employees are permitted to enter the plant 15 minutes before starting time and that actual studies of time cards in such plants reveal that most cards are punched 14 to 6 minutes before actual starting time, with the greatest bulk of them 14 to 9 minutes before actual starting time. This is closely in line with the experience of the Pottery Company; and after examining time cards of plaintiffs' witnesses, Wright stated that they appeared to be typical of those he had seen elsewhere. He further stated that there was nothing unusual about finding an employee punching in regularly at 14 minutes before starting time over a period of weeks. (This is corroborated by the testimony of plaintiffs' witness Larimer, previously referred to, that he regularly punched in a half hour before starting time at the plant where he was presently employed. As to Pottery Company workers, it appears that often they came in automobiles with those working on an earlier shift, so that they would be ready to ring in as soon as the clock was "opened.") Similarly, plaintiffs' expert witness, Mr. Wishart, stated that in most plants the employees are allowed to come in as much as a half hour before the actual beginning of work and will stand around smoking and gossiping in the interim.

It seems obvious, both from the testimony and general observation and experience, that in a large factory having many employees arriving on the same shift a certain amount of time is necessary to get them in and out of the plant. They cannot all come in and start work the same minute they are permitted to enter. Apparently, general experience, both in plants operated under collective bargaining contracts and those which are not, has found that fifteen minutes is about the minimum time needed to enable the workmen to get in at the beginning and clear out at the end of the shift. If the time allowed were cut too drastically, it might work a hardship on the employees in forcing them to plan their time of arrival more closely and to rush into work.

Finally, consideration of the general conduct of the parties on the two sides of this lawsuit tends to reinforce the conclusion which I have reached. Looking first to the position of the company, there is to be considered the question of its motive to evade the law. This question is important in this case, since if plaintiffs' claim is correct, defendant's actions cannot be explained on the ground of a mistaken interpretation of the law or some other basis consistent with good faith, but rather only on the assumption that it deliberately adopted a system to cheat its employees out of credit for time to which they were entitled. Obviously, if the claim is true, the motive for such activity must have been to save labor costs at the expense of the employees. If the company could have accomplished this objective more easily and with less risk, of liability in other ways, then the likelihood of such a system having existed is diminished. The evidence shows, however, that the company twice a year—at vacation time and at the end of the year—made payments to its employees in addition to their regular piece rate earnings equal to approximately one week's pay each time, pursuant to what is called the "51-52-62 plan." If the company had been trying to reduce its labor costs, would it not have occurred to it to cut out these payments, rather than take the chance of being found guilty of violation of the Wage and Hour Act, with the attendant double liability? (It must be remembered that if the company had figured time according to punched entries on the time cards the increased cost would not have been as great as might seem, since the only increase involved would have been the 50% extra pay for overtime and its employees in many instances were working well under the statutory period for payment of straight time.) Again, the company raised the pay of its employees on more than one occasion during the period in litigation. It also appears that it permitted its employees on occasions to take time off during the day for purposes of their own and to stop work before quitting time. No doubt the defendant did these things to keep its employees

satisfied, in its own self-interest; but could it afford to attempt to develop good will among its employees on the one hand and turn around and incur their ill will by cheating them out of their rights under the Wage and Hour Act on the other?

It is not intended to imply that an employer who has been "good" to his employees can violate the Wage and Hour Act with impunity, or even to intimate that this particular employer has been good to its employees. Rather, these actions of the company are mentioned solely because they seem generally inconsistent with one view on a disputed issue of fact and so aid in its determination, just as the actions of parties after entering into a contract are considered in determining the means of an ambiguous clause, under the rule of practical construction.

The adjustment which the company admittedly made when the Act came into effect, including the reduction of working hours and increase of personnel, should also be taken into account. The foremen were advised of the requirements of the Act and the intention of the company to comply with it, and employees in turn were instructed to keep their hours within the statutory period. Also to be considered, is the likelihood that, if the company had been doing what is charged, it would have used in place of a time clock system the more primitive time-recording system of having the foremen enter the total daily working time of each employee in a time book, which would make proof of "extra" time worked more difficult.

In this connection, defendant places considerable emphasis upon the argument that, if the company could have foreseen the claims here made, it could have adjusted its system to compute time according to the punched entries on the clock, without any appreciable increase in its costs, since it could have further increased personnel and reduced

the working hours of its employees to less than 40 under that system of computation, its plant machinery and equipment being claimed adequate to take care of the increased force of workmen with little additional expenditure. It is contended, however, that this would have worked a great hardship on the employees, since they would have been deprived of the opportunity to work a full forty-hour week and accordingly would have had their earnings cut down. The argument assumes, however, that the rates for piecework would have remained constant, whereas it seems evident that if total weekly earnings had been diminished the employees would at least have demanded, and likely obtained, increased rates of pay. In any event, the company would naturally be reluctant to face such demands. It may be true, however, that total production costs would not rise in proportion to the reduction in hours of work, so the argument may have some, although not great, bearing upon the issue here in controversy.

Turning to the other side of the picture, we find that the employees, although admittedly well acquainted with the company's system of computing their working time and with the general requirements of the Act, did not protest to the company concerning the practice complained of until this suit was instituted. It would seem that if the company were deliberately cheating its employees by making them work extra time not credited to them in violation of the Wage and Hour Act some voice would have been raised in protest. It is fully appreciated that employees are often reluctant to complain of known abuses because of fear of dismissal or poor treatment on their jobs; but it seems improbable that in a large group of employees all of them could be so easily subdued. The record here in fact shows that the employees felt free to make complaints about other practices of the management —for instance, repeated complaints by jiggermen about their being charged for sponges used by the finishers led

to a change in the practice. Where the decision on the question of fact is otherwise doubtful, the lack of objection is certainly of some evidentiary value. Perhaps the true explanation for the conduct of the employees in this respect is found in the testimony of the witness Metz that the fact that the company was working them more time than it was crediting them with never occurred to him before this suit was instituted.

No one of the above-mentioned factors is conclusive, but considered as a whole along with the testimony directly relating to working time, they make it clear, in my opinion, that plaintiffs have not sustained their burden to prove that all the time between the punched entries on the clock was spent in working and that conversely none of the time in advance of the starting time spent by employees arriving early was their own time. I further think that on this record it must be concluded that production work did not regularly commence until the established starting time; and, if in some instances it was commenced shortly prior thereto, it was counterbalanced by occasions when it was started after the hour and by admitted occasions when it was stopped several minutes before quitting time.

On the other hand, it is clear that time spent in walking from the time clocks to their respective places of work and in performing personal preparatory duties came in advance of the starting time. (It is possible that the same is true of at least part of the time spent in preliminary work of a non-personal nature, but for reasons hereafter stated it is unnecessary to decide this definitely.) If, as a matter of law, such time is employment time under the Act, the company erred in not crediting it to employees and may still be liable to them. This leads to consideration of the law on the problem of working time.

4. Law as to Working Time

As heretofore stated, the Act says that employees subject to its provisions must be compensated for their "employment" in excess of a specified number of hours in a work week at not less than one and one half times their regular rate of pay. The critical issue is as to what constitutes time spent in employment or working time. The statute itself does not attempt to define the phrase, Congress evidently feeling that no definition applicable to the many types of situations in which the problem arises could be devised which would be helpful. The only statutory definition of any pertinence is that of the word "employ," which is defined to include "suffer or permit to work."

In approaching the problem of interpretation, it is to be noted that the words to be interpreted are not technical ones, and accordingly must be given their ordinary, commonly understood meaning. 59 C. J. 974. In determining this, the practical consequences of adopting one construction or the other must be considered. Since the meaning of any language is based to a large extent upon custom, business practices and customs existing when the Act was passed must be taken into consideration. Of course, as the statute intended to modify business customs in certain respects, they can be considered only to the extent that they throw light upon the meaning of the language used and no effect can be given to a custom inconsistent with the provisions of the statute. The extent to which a particular custom as to treatment of working time may have resulted from a superior bargaining advantage possessed by the employer and accordingly inconsistent with the ordinary meaning of the phrase, in the light of which the statute was drafted by Congress, must also be considered. (In this connection, administrative rulings appear to give

more weight to customs arising from collective bargaining negotiations than otherwise.)

It is obvious that many difficulties will arise in the application of the Act to business situations and in determining on which side of the line many kinds of activities engaged in by employees fall. There are a number of court decisions and a great many administrative rulings of the Wage and Hour Division of the United States Department of Labor (including an Interpretative Bulletin covering the subject generally) on the question of what constitutes working time. The rulings of the Administrator, it may be noted, are entitled to considerable weight, although not binding upon the courts. United States v. American Trucking Association, 310 U. S. 534, 84 L. Ed. 345. The most vexatious problems appear to have arisen on the proper treatment of waiting time and travel time.

It appears that under the law, in place of giving the term a fixed and rigid meaning, a certain amount of latitude is left for employer and employee to agree as to whether a particular activity of otherwise doubtful status is working time or not. There is a practical reason for this, in that many borderline situations arise where reasonable minds will differ as to the proper treatment of the activity in question, and if no such latitude were recognized it would be impossible for employer and employee to reach a good faith agreement as to its treatment without having it subject to being upset by a court reaching a different conclusion long afterwards. The decision of the Supreme Court in Williams v. Terminal Co., 315 U. S. 386, 86 L. Ed. 598, involving the question of whether tips given to redcaps could be treated as wages for purposes of satisfying the minimum wage provisions of the statute, is a case in point. The Court held that, even though in the absence of contract tips were not wages but gratuities to be retained by the employee, it was permissible for

employer and employee to agree that they would be counted as wages for the purpose of satisfying the Act. The case is doubly significant here in that the Court held that a contract to treat the tips as wages arose from the publication of an order by the employer to that effect and the action of the employees in continuing to work in the face of the order.

A similar decision was reached with respect to the meaning of "regular rate" of pay under the Act. With employees hired at a weekly salary, such rate has been held, in the absence of agreement to the contrary, to be the average hourly amount earned each week. Overnight Motor Co. v. Missel, 316 U. S. 572, 86 L. Ed. 1159. However, in Walling v. Belo Corp., 316 U. S. 624, 86 L. Ed. 1166, the Supreme Court held that an employer and employee could by agreement establish a regular rate of pay, coupled with a guaranteed weekly income, which regular rate will differ from the average hourly rate for any week in which less than the guaranteed time is worked. The remarks of the Court on the problem of interpretation are pertinent (p. 634):

> "The problem presented by this case is difficult—difficult because we are asked to provide a rigid definition of 'regular rate' when Congress has failed to provide one. Presumably, Congress refrained from attempting such a definition because the employment relationships to which the Act would apply were so various and unpredictable. And that which it was unwise for Congress to do, this Court should not do. When employer and employees have agreed upon an arrangement which has proven mutually satisfactory, we should not upset it and approve an inflexible and artificial interpretation of the Act which finds no support in its text and which as a practical matter eliminates the possibility of steady income to employees with

irregular hours. Where the question is as close as this one, it is well to follow the Congressional lead and to afford the fullest possible scope to agreements among the individuals who are actually affected."

A recent District Court decision adopting the same principle with reference to the meaning of working time is Walling v. Cumberland & Liberty Mills Co., 5 W. H. Rep. 641.

The Administrator of the Wage and Hour Division has taken the same position with respect to its enforcement policy, stating in repeated rulings that in situations where hard and fast rules as to what constitutes working time are difficult to lay down, any reasonable agreement between employer and employee will be respected. (See, e. g., Interpretative Bulletin No. 13 on "Hours Worked," Paragraphs 7 and 14.) Thus, in the mining industry, the general rule prevails that time spent by miners in getting down the shaft and walking to the place of work underground is part of their working time. Sunshine Mining Co. v. Carver, 41 F. Supp. 60. In bituminous coal mines, however, the custom, as embodied in collective bargaining contracts with the United Mine Workers, excluded this time from working time. The Administrator, in response to inquiries, rules that this practice of computing working time on a "face-to-face" basis in accordance with custom was proper. 3 W. H. Rep. 332; 4 W. H. Rep. 137.

Of course, there is a limitation on the operation of this principle, as an employer and employee could not be permitted to contract that what is clearly working time is not to be considered as such.

It is important to note that there is no requirement in the Act or administrative regulations that a time clock

system of recording employees' time be used by employers. If it is used, it will be given consideration, only to the extent that it reflects the actual time worked by the employees. (Interpretative Bulletin No. 13, Paragraph 3.) While there are no cases on the point, it is generally recognized by the Administrator that, as customarily used, the punched entries on the time cards will reflect more than the actual working time. Thus, an Inspection Field Letter of the Division (defendant's Exhibit No. 113) states that where employees enter their places of employment a short time (15 or 20 minutes) before the regular starting time for their own convenience and not because required or expected to do so by their employer, such periods are not considered time worked, if no work is performed. In matter of Conra Mfg. Co. (2 C. C. H. Labor Law Serv., Par. 38,126), the Administrator held an examiner's finding of overtime based upon punched time incorrect as reflecting more than the actual hours of work. A similar ruling has been made by the Administrator in interpreting the related Walsh-Healey Act. (5 W. H. R. 148) (Cf. Administrator's Opinion Letter, C. C. H. Labor Law Service, Par. 33,152.) No case or administrative ruling has been found computing working time strictly according to the punched time on the time clock cards.

Coming more directly to the question of what constitutes working time, we find that the Administrator has attempted a general definition of working time to include (1) time the employee is on duty on the employer's premises or at a prescribed workplace; (2) time the employee is suffered or permitted to work, whether or not he is required to do so. (See Interpretative Bulletin No. 13.) It is pointed out, however, that specific problems may not be solved by application of this definition and may require special treatment. It is clear, of course, that working time does not necessarily involve manual labor by the employee, but the employer may even be charged with time the employee spends in waiting, if subject to

the control of the employer during such period. Missouri, K. & T. Ry. Co. v. United States, 231 U. S. 112, 58 L. Ed. 144.

The particular issues presented here involve the proper classification of time spent by employees from the time the clock is punched in until production work is commenced, including (1) time taken up in walking from the time clock to the place of work; (2) time consumed in preliminary work; and (3) waiting time, if any. No claim is made by plaintiffs for time antecedent to the punching in of the clock, including travel time from home to plant or time spent in waiting to punch in at the clock. (As to the former, the general rule is that time spent in traveling from home to place of work is not working time, Bulot v. Freeport Sulphur Co., 45 F. Supp. 380; Dollar v. Caddo River Lumber Co., 43 F. Supp. 822. As to the latter, the employer would seem to be obligated to have sufficient clocks so the employees would not be required to wait an unreasonable time to punch in or out. No claim is made by plaintiffs that the time required here was unreasonable.)

Plaintiffs' contention is that the problems of working time can be solved by the application of a simple formula, namely, that it includes all time spent by the employee on the employer's premises at the request of the latter. However, while that may be as good a general statement of the rule as can be devised, it cannot be taken literally. Thus, it is universally agreed that the employer is not chargeable with time allowed the employee for lunch time (assuming no duties are imposed upon him during the period), even though it must be spent on the employer's premises. Sunshine Mining Co. v. Carver, supra. In certain operations, watchmen may be required to be on the premises all day long, yet time spent in sleeping, eating, and relaxing may be excluded from their working time. Perry v. Livermore, 5 W. H. Rep. 876; Johnson v.

Dierks Lumber & Coal Co., supra; Skidmore v. Swift, 5 W.H. Rep. 635; Interpretative Bulletin No. 13, Par. 7. Finally, the suggested formula would include time spent in walking from the company's gate to the time clocks, which plaintiffs themselves do not claim.

Plaintiffs rely chiefly upon two cases, Sunshine Mining Co. v. Carver, supra, and Fleming v. Rex Oil & Gas Co., 43 F. Supp. 950. The Sunshine case is cited on the issue as to the treatment of time walking from the time clocks to the department, that case holding that the working time of miners included time spent in being transported from the surface of the mine to the place of work underground. A similar decision was reached in Tennessee Coal Co. v. Muscoda Local, 40 F. Supp. 4, where the Court pointed out that the trip to the ultimate place of work was unpleasant, time-consuming, sometimes dangerous, and under strict control of the employer.

Defendant claims that the complete record of the Sunshine case shows that the Court was only giving effect to customary practice and that in fact certain time spent on the employer's premises before arrival at the collar of the mine was not included as working time. The contrary practice, in effect, in the bituminous coal mining industry, with the sanction of the Administrator, has been noted. However that may be, the Sunshine case does not seem in point on the issue under consideration in the case at bar, in view of the very different nature of the trip involved. In fact, there seems to be no case precisely on the point. In Bulot v. Freeport Sulphur Co., supra, it was held that time of from 5 to 15 minutes spent by employees between the arrival of motor boats at the company dock and the actual commencement of work was not working time. It appears from testimony of expert witnesses for both sides, as well as from certain collective bargaining contracts in evidence, that the es-

tablished custom in industry is to require factory workmen to be at their place of work, and not at the time clocks, at the starting time. In view of that fact and the further fact that the employees worked with knowledge of defendant's practice not to credit them with walking time from time clocks to department (creating a contract to that effect under the rule in the Williams case, supra), it would seem that defendant's practice in that respect was not improper under the Act.

The Rex Oil case relates in a general way to the question of waiting time. The Court there held that the hours worked by oil pumpers included not only hours they were engaged in manual labor but also hours they were charged with substantial responsibility for the successful operation of the pumps and "including also the periods during which they were obliged to remain on or near the premises to enable them to carry such responsibility properly." The case is typical of those holding that the employer must pay for time spent by watchmen on guard duty, even when not engaged in manual labor. Johnson v. Dierks Lumber & Coal Co., supra. The general distinction established by the cases on waiting time is that it is working time if the employee is charged with duties or is otherwise under control of the employer during the period, but not if the employee is free (and the period is of long enough duration) to spend as he pleases. Travis v. Ray, 41 F. Supp. 6; Thompson v. Daugherty, 40 F. Supp. 279; Southern Ry. v. Black, 127 F. (2d) 280; Walling v. Allied Messenger Service, 47 F. Supp. 773; Walling v. Sun Publishing Co., 47 F. Supp. 180. Insofar as a question of waiting time, before or after the shift periods, is involved in the case at bar, it is a question of fact; and under my findings plaintiffs have not proved that if they came in early enough to have waiting time they were required to do so or were not free to spend such time on their own behalf.

The matter of preliminary work in this case involves more difficulty. There is no good judicial decision on the point. The Administrator of the Wage and Hour Division has ruled (C.C.H. Labor Law Serv., Par. 23,102, 1942) that work clothes are changed on the employee's time when he is free to wear them home, and on the employer's time when they must be changed on the premises, with a tolerance of five minutes allowed for enforcement purposes in recognition of the difficulty of keeping accurate records of the records of the few minutes required to change clothes. With respect to non-personal preliminary duties, the Inspection Field Letter, Defendant's Exhibit 113, makes it clear that the Administrator considers such work as part of the employment time. There is testimony in the record to the effect that the general custom prevailing in industry is to have clothes changed on the employee's time, and that the same is true of certain brief preliminary work, such as assembling tools; and the Appalachian Agreement with the United Mine Workers (Defendant's Exhibit 73) definitely provides that certain work of drivers in harnessing and unharnessing mules shall not be included as part of the day's labor. On the other hand, there is also evidence of a practice of some plants to permit employees to stop work five minutes early at the end of the day to clean up.

Definite determination of this issue is unnecessary, in view of another principle of law which is applicable here. The rule referred to is that which requires that in order for the Court to render a judgment for damages in favor of a plaintiff, evidence as to the amount of damages suffered must be reasonably definite and not based upon mere conjecture. The courts have had frequent occasion to apply this principle in cases under the Wage and Hour Act, since claims for overtime have frequently been made by employees who have kept no records of the time worked by them. Jax Beer Co. v. Redfern, 124 F. (2d) 172 (C.C.A. 5); Bowman v. Pace Co., 119 F. (2d) 858 (C.C.A.

5); Wilkinson v. Noland Co., 40 F. Supp. 1009; Lowrimoore v. Union Bag & Paper Corp., 30 F. Supp. 647; Prins v. Skaff, 47 F. Supp. 430; Mortensen v. Western Light & Telephone Co., supra; Dollar v. Caddo River Lumber Co., supra. While records are not absolutely required, Johnson v. Dierks Lumber & Coal Co., supra, there must be in lieu thereof other reliable evidence from which the amount of overtime work done can be determined with reasonable definiteness.

In the case at bar, if the plaintiffs' claim of 56 minutes' extra work per day is well taken, the amount of overtime can be readily and precisely figured. The same is true if the contention that all the punched time on the cards constituted employment time is correct. On the other hand, a computation of overtime on the basis of a finding that the employees worked more than the time credited to them but less than the time shown by the entries on the cards would on this record be speculative. Plaintiffs' witnesses kept no record of their time, and they admitted that apart from the time clock cards they could not tell on any particular day when they arrived at their departments or commenced preliminary work. The nature of the preliminary activities and the time taken up by them varied with each department, with different employees in the same department, and with the same employees on different days. On this record, neither the amount of time taken up by such activity nor the proportion of it spent in advance of the established starting time can be computed for any given employee with any degree of reliability. (This is wholly apart from the question of counterbalancing time not worked by employees when they quit and cleaned up in advance of the established quitting time.)

Accordingly, in my view of the case, no recovery for plaintiffs can be based upon the claim that time spent in preliminary work should have been credited to them. It

may be noted that even if the amount of such time could be computed and were considered time worked, the amount of any recovery of overtime on that basis would be very small, inasmuch as such time under the most liberal estimates could not have aggregated over one-half hour per week, and in most instances there was a greater margin than that between the weekly working time credited to the employees and the statutory period for payment of straight time.

B. Sub-Minimum Wages

The pleadings filed by plaintiffs charge that all women employees represented in this action were paid sub-minimum wages by the Pottery Company. On the trial, the claim appears to have been restricted to beginnnig women employees, the claim being that for a period of time after hiring, considered as a learning period, a deduction of 10% was made by the company from minimum wages paid to women employees, without obtaining the approval of the Administrator pursuant to Section 14 of the Act. (This section authorizes under certain conditions the payment of learners and apprentices at less than minimum wages.)

The evidence, however, does not bear out the contention. The evidence shows that until the practice was discontinued in January, 1941, or thereabouts, women employees in the decorating department were paid, for a period of approximately ten weeks after hiring, a beginner's piece rate which was 10% less than the rate paid to experienced employees. The reason assigned by the company for this practice is the greater spoilage of ware by beginners. However, the evidence is likewise clear that the girls in the department were guaranteed the statutory minimum wage of twenty-five cents per hour

from October, 1938, to October, 1939, and thirty cents per hour thereafter; and, when their earnings upon a piecework basis fell short of that figure they were paid an hourly rate equal to the statutory minimum. Experienced women employees were getting substantially above the minimum rates. Thus, there is no question of an apprentice rate below the minimum, and no problem arising under Section 14, which might require the Administrator's approval, is involved. As the record indicates that the girls were made acquainted at the time of hiring with the fact that their piece rate would be 10% less than that of experienced workers, the lower rate was their regular rate of pay for the apprentice period, and no question of overtime is therefore involved.

It is true, of course, that if the claim of plaintiff is correct that more hours were worked by employees than the company gave them credit for, then, as a simple matter of arithmetic those who were purportedly being paid at exactly minimum rates actually received slightly less than the minimum. The decision on this issue, however, depends upon whether the employees did work more hours than they were credited with, which question has already been considered.

C. Pay Roll Deductions

1. *Deductions for Tools*

The issue as to pay roll deductions involves primarily the company's practice of requiring its employees to furnish certain tools and equipment used in their work, and to charge the price of such tools against their earnings when purchased at the company store. In addition, plaintiffs complain of a second type of deductions which is made by the company from the earnings of certain

employees to pay for the wages of another employee, referred to as the "invisible man."

There appears to be no material dispute in the evidence over the facts relating to this issue. The supplies which the employees were required to purchase included principally sponges, brushes, scissors, gloves, finger cots, and pails. The company maintained a store from which the employees generally obtained these items, although they were permitted to purchase them elsewhere. When obtained at the company store, they were paid for, in lieu of cash, by a deduction from the piecework earnings of the employee involved, the net figure being entered on the company's records and upon pay roll checks as the gross pay of the employee. The general practice was to have the employer sign a slip when he obtained the supplies from the store; however, in some instances, the foremen procured the supplies for the employees, in which case no slip was signed by them.

In fixing the charge for the different kinds of equipment involved, the company generally made a mark-up over its out-of-pocket cost ranging up to 33 1/3%, the figure which, in the opinion of the general manager, Doll, was necessary to cover overhead and handling expense. According to Doll, the supplies as a whole were sold at an actual loss; and, in exceptioned instances, the charge for certain items was less than the out-of-pocket cost.

The reason for this practice of charging for equipment appears to be largely historical, growing out of established customs in the pottery industry to require skilled workmen to furnish their own tools. A survival of outmoded practices is seen in the requirement that jiggermen purchase sponges used by finishers, which was abolished during the period in litigation as a result of complaints by the jiggermen. It appears that the jiggerman formerly operated in the industry pretty much as a

subcontractor, hiring his own help and materials. The reason assigned for not eliminating the deductions entirely is the fear of greater wastage which might result. It appears quite common in industry generally for skilled workmen to be required to furnish certain of their tools.

The testimony shows that the employees of the company were well acquainted with its practices in charging them for equipment. In general, the items which the employees were required to buy were low in price, and the total deductions were not large in amounts. (Plaintiffs, in stating this claim in their amended bill of particulars, cited the buggies used to transport ware between departments as a typical example of the items charged for. The evidence shows that these carriers cost $50 to $500 each and were never charged to the employees.) A computation made at plaintiffs' request showed that the supplies charged to Dorothy May for the period in litigation totaled $6.34. The total purchases of sponges by all employees was estimated by Mr. Doll at not more than $2,500 per year, and of other supplies at not more than $500 or $1,000 per year.

Plaintiffs claim that the deductions were unauthorized and improper under the law; and that the company made profits at the expense of its employees which it should be compelled to disgorge. Defendant claims that the deductions were not deductions from wages at all, but just one of the factors involved in their determination, the piecework rates being set at such figure as would enable the employees to earn a reasonable amount after allowance for the cost to him of furnishing tools. Defendant further claims that in any event no violation of the law is involved.

Just how the deductions in question involve any violation of the Wage and Hour Act has not been made clear. The Act says nothing about deductions from wages. As

the employees' gross pay entered was after the deductions were taken and this equalled or exceeded the statutory minimum no question of sub-minimum wages is involved. And since the employees' regular rate of pay was their piecework rate times output minus charges for equipment (which charges were part of the understanding subject to which they worked), and time and one-half for overtime (in the infrequent weeks when it was worked) was figured on this base, the overtime provisions would seem to have been satisfied.

Apparently, plaintiffs rely upon certain regulations promulgated by the Administrator of the Wage and Hour Division pursuant to Section 3(m) of the Act, which defines "wage" to include the reasonable cost to the employer of furnishing the employee with "board, lodging, or other facilities," if customarily furnished by the employer. (See Official Regulations of Administrator, Part 531.) The evident purpose of this provision is to deal with wages paid to employees in other than cash, the term "facilities" referring to such items as food, merchandise, or fuel, which are for the personal benefit of the employee and which he would otherwise pay for out of his own pocket. (Interpretative Bulletin, No. 3, Wage and Hour Division). The Act permits the employer to charge the reasonable cost of such supplies to the employee in satisfying the minimum wage provisions of the Act. The charge thus made can, of course, be stated either in terms of a credit or a deduction.

Under the interpretation of the Act, which has been adopted by the Administrator, tools and equipment used in the employer's business are not facilities, and the Regulations pursuant to Section 3(m) are therefore not involved. The whole subject has been clarified by a recent ruling of the Administrator issued January 13, 1943 (C.C.H., Labor Law Service, Par. 33,212). Under this ruling, deductions for tools can be made by the employer

if, and only if, the deduction does not cause the employees' resulting wage to go below the statutory minimum. Since that result was not produced in the case at bar, the question of profit is not involved—it would seem, in fact, that the employer cannot make deductions for tools which force the wages below the minimum even though he recoups only a fraction of his costs.

Of course, if deductions were made only in overtime weeks or if the deductions were contrary to agreement between employer and employee so that it could be said that the regular rate of pay is the amount earned before deductions, a violation of the overtime provisions of the Act might be involved. Such conduct, however, is not involved in the facts in the case at bar.

2. *Deductions for "Invisible Man"*

The legal problem with respect to the so-called deduction for "invisible man" is substantially identical to that for tools and equipment. The practice complained of is that of charging against the earnings of a particular employee part of the wages of another employee performing a service related to the former's work. The three instances of this practice which were the subject of testimony, all involving charges to the jiggerman, were the deduction for bisque grinding, for inspecting crocked ware, and for wheeling molds. The latter example is typical. The work of removing broken molds which had accumulated in the clay shop was formerly done by the jiggerman as a part of the job. Later, unskilled employees were hired to do this work, and their pay (or part of it) charged to the jiggermen, who were enabled to spend a greater proportion of their time on the more highly paid jiggering work. The amount of this deduction, according to the testimony of Larimer, was about 75 cents every six weeks.

It appears that deductions of this type are not unique with the defendant company, but are common in the pottery industry. The jiggermen who testified showed that they were entirely familiar with the defendants' practice to charge them for the work in question, and worked with that understanding. For the reasons stated in connection with the deductions for tools, I can see no violation of the minimum wage or overtime provisions of the Fair Labor Standards Act in this practice. It may be that a question of business and labor policy is involved which is a proper subject for negotiation between employer and employees, but that question is not before the Court.

D. Charity Work

The claim of "charity work" (i.e., work done by employees for which they were not compensated) was, like the claim for deductions, first raised in the amended bill of particulars. There are two angles to this claim: first, that work was done within the regular time of the employees recorded on the time clock cards, but which was not paid for separately; second, that work was done before the cards were punched in or after they were punched out, which was not only not paid for but decreased the working time credited to them and deprived them of possible overtime.

The principal example of the first type of charity work involves the job of "cutting print," performed by the girls engaged in decal work. The routine operations on their work were to put a coat of varnish upon the ware, moisten a pattern and apply it to the ware, press it down with a brush to transfer the design uniformly to the ware, and remove the pattern. As purchased by the company, the patterns were printed on large sheets of paper

having a number of identical designs. It was necessary for the girls to separate the thin sheet upon which the patterns were printed from the heavy backing sheet to which it was affixed, and then to cut out the individual patterns so that they could be applied individually to the ware. Instead of cutting the print immediately before applying each pattern, the job was generally reserved until a period approximately an hour before quitting time, and enough were cut at that time to fill the estimated needs for the following day. The girls were paid upon the basis of the number of pieces of ware turned out by them, with no separate compensation for cutting the print.

Similarly, as will appear, certain employees were required to do certain work such as loading and unloading saggers and changing molds without separate compensation therefor.

Plaintiffs, however, do not point out how a violation of the statute is involved in this practice. So long as the wages paid averaged an amount equal to or in excess of the statutory minimum per week (which it appears they did) it would seem that the minimum wage requirements were satisfied. And, since it is undisputed that the regular rate of pay of the employees was based on the number of pieces produced and did not include separate payment for the work in question, no violation of the overtime provisions seems involved.

Apart from the Act, it seems clear that when employees are paid on a piecework basis, the rate which is fixed practically always covers a group of operations, including preliminary operations, incidental to turning out a particular piece. If the practice had been for a single pattern to be cut by the girls at the time each item of ware was processed, the method of payment would be recognized as proper; and it would seem that it does not

become improper merely because the work is saved up till the end of the day. It may be that where the work is more indirectly related to the productive operations it would be better business policy to pay for it separately; but that is a matter for negotiation between employer and employees and not of the application of the Act. (It appears that in the case of mold changing, the company changed its practice to provide for separate payment for the job.)

An administrative ruling on the point in question was handed down by the solicitor of the Wage and Hour Division, who stated, in response to an inquiry, that no violation of the minimum wage requirements of the Act would be involved where an employee was required to pick impurities from loads of coal without separate compensation therefor, so long as his weekly pay averaged more than the statutory minimum. Wage Hour Manual (1941 ed.) 186.

The second aspect of the claim of charity work does present a question under the Act, because if an employee was required or permitted to do work outside his punched time and the addition of the time so spent to his working time as computed by the company would result in its exceeding the statutory limitation in any week, he should have been paid overtime for such excess time.

Three claimed examples of the type of situation here involved were the subject of testimony. The first two pertained to the glost belt department. It is claimed, first, that on Monday mornings the men in the department were required to come in approximately fifteen minutes before the women employees to load the saggers on the belt and unload cars, and then go out to punch in their cards; and, second, that on Friday afternoons the men were required to punch out and then return to unload the saggers from the belt and do general cleaning work. The third example involved the clay shop,

where it is claimed that jiggermen were required to change and oil molds after punching out their cards.

The evidence submitted by plaintiffs on these claims is not entirely satisfactory. Two witnesses, Trombley and Dacko, testified relative to the Friday afternoon cleanup work in the glost belt department; and their testimony is in conflict on the fundamental point involved. Trombley stated that they invariably punched out first and came back to do the work (R. 151, 190); while Dacko said he punched out *after* doing the work, except on infrequent occasions (R. 1985). (A third witness from the department, Pearl, did not testify on the point. Another unexplained inconsistency between the testimony of Dacko and Trombley may be noted, in that the former stated that the girls came every Friday evening after punching out to do cleanup work (R. 1987); while Trombley said the girls were always done with the cleaning before the men and did not mention any evening work (R. 189)). Trombley's testimony was in substance that the men and girls first punched out at about the same time and that the men then returned to the department to do the cleanup work, which took from 15 to 30 minutes. Strangely enough, Trombley's time cards for the period show that he nearly always punched out on Friday afternoons at 20 to 30 minutes after the girls in the department, and he was unable to offer any satisfactory explanation of this except on the assumption that he did the cleanup work during that period (See R. 245-248, 331). In view of this fact, it seems probable that Dacko was correct in stating that the work was practically always done before punching out.

Trombley and Dacko were also plaintiffs' principal witnesses with respect to Monday morning work. (Pearl and Anderson also testified briefly on this point, although they did not indicate any restriction of the practice to Monday mornings.) The testimony of these witnesses was that they came in fifteen minutes before the usual

starting time on Monday mornings to do the loading work and then went out to punch their time cards at about the same time as the girls in the department. However, the time cards of these men show that until October, 1940, they punched in at about the same time as the girls, and thereafter approximately fifteen minutes earlier. Dacko had some difficulty explaining this fact, although it may possibly be accounted for by the testimony of Trombley that the practice complained of was discontinued about the beginning of 1941. On the other hand, the explanation was offered by the foreman, Stief, and the general manager, Doll, that prior to October, 1940, the men came in at the same time as the girls and loaded the belts while the girls waited; and in that month, due to the reduction in the statutory workweek at that time to forty hours, the practice was changed to have the men come in early to do this work and avoid the necessity of having the girls wait.

The third claim of charity work outside hours—that of changing and oiling molds—was the subject of testimony of two jiggermen, Metz and Larimer. It appears that this job was done practically every week without separate compensation therefor, until about the beginning of 1941 when the company began paying $2.00 for the job. The witnesses testified that this work was frequently done after punching out. Metz, however, stated that this was true only on part of the occasions when the work was done; and he further said that there was no way to tell how much time was spent on it outside the punched time on the cards or even to estimate the proportionate number of times it was done after and before ringing out (R. 1030-2). The foremen in the department, Sterner and Fitton, denied that the employees had ever been permitted to or had done this work after ringing out, although they stated that Metz and Larimer, among other employees, had requested permission to do so in order to get in more production time and increase their earnings.

Considering the nature of the testimony on these claims, it does not seem that plaintiffs have sustained the burden of proof resting upon them, and in the case of the Friday afternoon glost belt unloading the weight of the evidence seems definitely against the claim. However, assuming that the fact has been established that such work was done outside the punched time, still it would seem that the evidence is of such a nature that the court could not make any reliable computation of the additional time worked which was not credited to the employees. According to plaintiffs' testimony, much of this work was done outside the punched time on certain occasions and inside on other. No records were kept by any of the witnesses of the time spent in this work which was not credited to them; and (as was frankly admitted by Metz) there is no reliable way to estimate it. Accordingly, I do not think plaintiffs can recover on this claim. See Feldman v. Roschelle Bros., 6 W.H.R. 117. (It may be noted that even if the amount claimed could be computed, it would probably result in only a small liability, in view of the fact that the time credited to the employees in question was generally 15 minutes or more under the statutory period for payment of straight time.)

A related claim raised in the plaintiffs' amended bill of particulars (Paragraph F), which should be mentioned briefly, is one that certain employees had their time cards punched "out" at 3:29 and "in" at 3:31, to deprive the employees of credit for one-half hour's work. No testimony was submitted on the point in the main case of plaintiffs, but on rebuttal Floyd Pearl testified that he was frequently required on Monday and Tuesday in 1939, 1940, and 1941 to punch out at 3:29 and in at 3:31 to keep his time from going overtime (R. 3539). However, on being shown his cards beginning with November, 1939, he admitted that they did not contain any such entries. Consequently, the claim has not been substantiated.

CONCLUSION

There are other defenses raised by the Pottery Company, which have been studied by the Master but which, in view of my conclusions above set forth, I will not report upon, unless requested to do so by the Court. My general conclusion in this case, based upon the law and the record, is that plaintiffs have not established by a fair preponderance of evidence a violation by defendants of the Fair Labor Standards Act, and that the complaint should accordingly be dismissed. I append a brief summary of my findings of fact and conclusions of law.

SUMMARY FINDINGS OF FACT

1. The employees upon whose behalf this action was brought were engaged in the production of goods for interstate commerce or in occupations necessary thereto.

2. The defendant Pottery Company is a wholly owned subsidiary of the defendant S. S. Kresge Company and the two companies have several identical officers and directors. The Pottery Company, however, has not been undercapitalized, and the Kresge Company has not attempted to interfere with or control the internal management and operation of the Pottery Company, apart from the usual supervision of a corporation exercised by a controlling stockholder.

3. Plaintiffs and the employees represented by them acquiesced in the system and practices followed by the Pottery Company in computing their working time, and made no objection to the management relative thereto prior to the institution of this suit.

4. Employees of the Pottery Company were not required to, and did not, work approximately 56 minutes more per day than the company gave them credit for under the system of computing working time.

5. Employees were instructed to be, and generally were, in their departments, ready to work and with personal preliminary duties performed, by the established starting time.

6. Plaintiffs have not proved they were required to report in advance of said time, that they did work other than preliminary work before the established starting time, or that they worked continuously from the time they punched their cards in to the time they punched out.

7. Certain beginning women employees of the Pottery Company were paid for a time at piece rates which were 10% less than those paid to experienced employees, but if the resultant earnings averaged less than the statutory minimum wage they were paid at the statutory rate.

8. Employees were required to furnish certain tools and equipment used in the business of the company, and when purchased at the company store deductions to pay for them were made from their earnings. The net amount which was entered as the gross pay of the employees was used as a base to compute overtime; and if it amounted to less than the statutory minimum wage they were paid at the minimum rate.

9. A charge was made by the company against the earnings of jiggermen to go toward the payment of wages of certain employees performing services related to the jiggerman's job, including wheeling molds, bisque grinding, and inspection of cracked ware. The net amount, which was entered as the gross pay of the jiggerman, exceeded the statutory minimum wage and was used as a base to compute overtime.

10. Employees were required by the company to perform certain incidental work in connection with their jobs, such as cleanup work, without separate compensation therefor. The total average weekly compensation paid the employees, however, equalled or exceeded the statutory minimum.

11. Plaintiffs have not sustained the burden to prove that cleanup and setup work in the glost belt department or the work of changing molds in the clay shop was done by employees outside the punched time on their cards. Even if sustained, however, there is no reliable way to compute the time outside the punched time spent each week in this work.

SUMMARY CONCLUSIONS OF LAW

1. Plaintiffs and the employees represented by them are within the protection of the Fair Labor Standards Act, the interstate commerce requirements of the Act being satisfied.

2. Defendant S. S. Kresge Company is not an employer of the plaintiffs or the employees represented by them, within the meaning of the Act.

3. Plaintiffs and the represented employees are not estopped to maintain this action.

4. Plaintiffs and the represented employees are not barred from bringing this suit by an accord and satisfaction with the Pottery Company.

5. The results of the inspection of the Pottery Company's records and practices under the Act by the Wage and Hour Division of the United States Department of

Labor are irrelevant to the determination of this civil suit brought by employees under the Act.

6. Plaintiffs have the burden of proof to show that they spent time in their employment which the company did not give them credit for.

7. Plaintiffs have not established that work was done by them which the company did not credit them for, with the possible exception of preliminary work.

8. A computation of the time spent in preliminary work by each employee each week and not credited to him by the company cannot be made except upon a speculative basis, and accordingly forms no basis for recovery of overtime pay.

9. No violation of the minimum wage or overtime provisions of the Act are involved in the defendant's practices relative to deductions for tools.

10. No violation of the Act is involved in the deductions for the services of other employees charged to the jiggermen.

11. No violation of the Act is involved in defendant's practices relative to payment or non-payment for work incidental to the employees' jobs, such as cleanup work.

12. No violation of the minimum wage requirements of the Act is involved in defendant's practice of paying beginning women employees at lower piece rates than experienced workers, under the facts found here.

Respectfully submitted,

Donald L. Quaife,
Special Master.

Detroit, Michigan,
March 23, 1943.

OBJECTIONS TO MASTER'S REPORT

(Filed April 2, 1943)

Please take notice that the plaintiffs object to the report of the Special Master herein filed with the Clerk of this Court on March 23, 1943, in the following particulars:

I

Plaintiffs object to the Master's finding of fact numbered 2 on the ground that it is contrary to the evidence in finding that said Kresge Company did not control the operation of The Mt. Clemens Pottery Company. That said finding should have been that the Kresge Company was an employer within the meaning of the Fair Labor Standards Act of 1938 in that it did act directly and indirectly in the interest of an employer in relations to the employees herein.

The record discloses that the Pottery Company has carried the words painted on the water tower to the effect that it was "The Mt Clemens Pottery Company owned by S. S. Kresge Company." (See Master's Report, Page 9, Line 18.) The record discloses that plaintiffs' witnesses stated that the Pottery Company was also operated by the S. S. Kresge Company. (See Master's Report, Page 9.) All of the stock of the Pottery Company was owned by the Kresge Company. (See Master's Report, Page 9.) The Master erred in citing only cases decided under the National Labor Relations Act (See Master's Report, Page 10). The test thereunder is an entirely different one than set forth in Section 1 of the Wage and Hour Law. Objection is also made to statements on Page 10 of the Master's Report, Paragraph 2, to the effect that the Kresge Company is not an employer under the Act and that the issue.

is of relative "little practical importance, since it seems probable from an affidavit of its treasurer on file that the Pottery Company is amply able financially to respond to any judgment which may be obtained by plaintiffs here." There is nothing in any law which states that a company deemed an employer is any less an employer because some other person or corporation is also financially responsible.

II

Plaintiffs object to the Master's finding of fact numbered 3 to the effect that the plaintiffs and the employees represented by them acquiesced in the system and the practices followed by them in computing their working time and made no objection thereto prior to the institution of this suit and plaintiffs state that the Master should have found, first, that the plaintiffs and other employees represented by them herein did object repeatedly to the Company's method of computing their working time and that the employees did make objection to the manager thereto. Plaintiffs further state that under the Fair Labor Standards Act of 1938, it was not necessary for them to object and that if the method of computing working time violated the Act of Congress, no custom or agreement could cancel their rights to such overtime compensation. In this connection, we use the language from the recently decided case of the Tennessee Coal and Iron Company vs. Muscoda, Local No. 123, etc., Volume 6, Wage and Hour Reporter, Page 273, March 22, 1943, wherein the 5th Circuit Court of Appeals said that

> "It may be conceded, arguendo, that for twenty-five years prior to 1938 iron ore miners had not been compensated for travel time and that even after 1938 the parties to this suit had entered into contracts whereby it was agreed that no wages should be paid for travel time; but the very purpose of the Fair Labor Standards Act was to eliminate labor conditions detrimental to the general

> welfare of workers, and the remedial machinery set up to accomplish that purpose regulated hours of work and rates of pay. Industrial custom does not warrant the continuation of abuses that the Act was created to rectify; and no contractual agreement that compensation should not be paid for travel time is valid if in conflict with the Act."

The Master states that

> "Most of the plaintiffs' witnesses, including practically all who testified on the subject, admitted that they had made no complaints to the company . . ."

and that

> "The system had been in effect without change for several years prior to this suit."

(See Master's Report, Page 11, Paragraph 1.) This is in direct conflict with the record. Judge Picard in the case of Anachick vs. Transamerican Freight Lines, Case No. 2830, decided August 17, 1942, stated that the benefits of the Fair Labor Standards Act are available to the organized and unorganized. In this plant two strikes had occurred over the question of the employees being compelled to work without having compensation paid them. Charles E. Doll, Sr., admitted that he called the employees in one by one asking them to drop their claim for overtime. Employees were discharged who refused to work overtime. Even more, complaints had been registered by the employees with the Wage and Hour Division and the Supervising Inspector for the Wage and Hour Division for Michigan actually wrote the Company on September 8, 1941, that complaints had come into his office that the Company was working its employees as much as 56 minutes a day without crediting them therefor and that the Pottery Company was subjecting itself to liability under Section 16(b) of the Act. (See Plaintiffs' Exhibit 91.) In said letter the Division found that the conditions outlined

therein constituted violations of the provisions of the Fair Labor Standards Act of 1938. The Supervising Inspector sought to interview employees privately but the record reveals that he was not permitted to talk to the employees privately as Charles E. Doll, Jr., sat along side listening to what employees said. It was under such conditions that employees did not dare to make too aggressive objections. However, it is submitted that if Congress provided that employees should be paid for time worked that they cannot be estopped from asserting their claims under the law irrespective of coercion or failure to assert the claim. In other words, the employees cannot be estopped from asserting lawful claim for wages.

III

Plaintiffs object to the Master's finding of fact numbered 4 to the effect that the employees of the Pottery Company were not required to and did not work 56 minutes more per day than the Company gave them credit for under its system of computing working time and plaintiffs state that the Master should have found or determined what amount, if any, the employees actually worked overtime as shown by the time cards. The Master states that the employees did not work "56 minutes overtime," although the Master did find (see Page 18, Paragraph 3 of the Master's Report) that "there is no question but what employees are entitled to full credit for the time that they have worked." The time cards indicate that the employees were cheated out of a maximum of 56 minutes a day by the simple process of paying the employees only from the subsequent quarter hour in checking in and to the preceding quarter hour in checking out. The Master does not find what both parties concede, with certain minor exceptions, that the time clock cards are a correct reflection of the working time but the Master simply states that he does not think the employees worked approximately 56 minutes a day without being paid therefor.

IV

Plaintiffs object to the Master's finding of fact numbered 5 to the effect that employees were instructed to be and were in their departments ready to work and with personal preliminary duties performed by the established starting time and plaintiffs state that the Master should have found that the employees were required to be ready for work at the time they punched their cards and that said employees started to work immediately upon punching their time clock cards. Plaintiffs ask the Court to look at Page 2735 of the Transcript of Record wherein the Foreman, Ernest A. Harms, testified as follows:

> "Q. Do you advise the employees the day before what time they should check in?
> A. I do advise them, yes."

On Page 2442 of the Transcript appears the testimony of another Foreman, Carl Starner:

> "Q. Did you determine the evening before from some source as to what the starting time would be for the next day?
> A. We always knew ahead of time when the starting time would be.
> Q. Did you get that information, Mr. Starner, or did you make that decision. Did you get the information from someone else or did you make the decision as to what time the employees should come in the next day?
> A. Well, it wasn't always just my decision.
> Q. But did you participate in it?
> A. Yes sir.
> Q. And then you conveyed that information to the employees, is that correct, the day before so that they would know?
> A. That is right."

The evidence indicated clearly, therefore, that the employer specified the time when the employees should report

in and the Court will notice in innumerable cases that the employee, for months on end, reported in at 6:31 or 6:46. The employees testified (see Page 1280, Transcript) that they received instructions the night before as to the exact time when they were to report in the morning. The foremen sent girls home for not appearing at the specified time. The Court will notice from Exhibit 39-AA that Goldie Broniecki on December 12, 1939, reported in to work at 6:33 and was sent home. Objection is made to the refusal of the Special Master to allow the government witness, Harry A. Reifin, even to testify as to what he actually observed as to the time worked by the employees of The Mt. Clemens Pottery Company. Although the record reveals that Charles E. Doll, Jr., supervised the process of having persons go through the time clocks and rush to their work, it is important to note that the time cards themselves indicate that an employee reported in under instructions at exactly the same minute almost every day. For instance, the time clock cards of Clarence Burgess indicates that he reported in at exactly 6:31 every day between November 14, 1939 and February 20, 1940 (see Exhibits 82 to 82-G). Nelson Luchtman reported in at exactly 6:31 every day between November 14, 1939 and February 20, 1940 (see Exhibit 83 et seq.). This exacting procedure was followed with only little variance which might have occurred because many employees were required to pass through two time clocks at the same time. Employees who reported as much as five minutes after the fourteen-minute period prior to the time when their pay started were sent home as being late.

V

Plaintiffs object to the Master's finding of fact numbered 6 to the effect that the plaintiffs have not proved that they were required to report in advance of said time, that they did work other than preliminary work before the established starting time or that they worked con-

tinuously from the time they punched their cards in to the time they punched out and plaintiffs state that the Master should have found that the employees prepared themselves for work prior to punching the time clock cards, that they proceeded to work immediately after punching their time clock cards and that they worked continuously from the time they punched their cards in to the time they punched their cards out. The Master should have found that certain employees were required to and did work Monday mornings for a period of approximately one-half hour prior to punching in their time clock cards.

The foreman, Carl Starner, testified that "We instructed people as to what time they were to start and stop." He also testified that "it was to everybody's interest to get started immediately after punching the time clock because everyone is on piece work." There is no dispute in the evidence that the employees prepared themselves for work prior to the time when they check in. They hung up their clothes, took care of their personal needs and were ready to get to work at the time they punched the clock. This was conceded by all parties to the proceedings. It took a minute or two only for the employees to get into production work from the time they punched their time clock cards, and the Master's finding of fact is thus in direct conflict with the evidence.

VI

Plaintiffs object to the Master's finding of fact numbered 7 to the effect that certain beginning women employees of the Pottery Company were paid for a time at piece rates which were 10% less than those paid to experienced employees, but if the resultant earnings averaged less than the statutory minimum wage they were paid at the statutory rate. The Master should have found that a 10% deduction was made from the pay of all girls for the first ten weeks that they worked for The Mt.

Clemens Pottery Company, that the Company was not authorized to apply an apprentice rate or make these unauthorized deductions from the employees' pay since no agreement to that effect had been entered into by the employer and employees and in those work weeks when the pay of the employees was less than the minimum the Company should be required to pay the minimum wages accruing. Attention of the Court is called to Exhibit 44 where it is indicated that Alice Stoll and others had their wages reduced 10% for the first ten weeks and that said practices continued at least until January 14, 1941, as indicated in the payroll records of Marie Gosline and Marlyn Corby. The Court will notice also from Exhibit 78 that unauthorized deductions were made from employees' pay, taking the wages below the minimum. The Court will notice that in the case of Dorothy Mae unauthorized deductions in the amount of $6.34 for materials were made.

VII

Plaintiffs object to the Master's finding of fact numbered 8 to the effect that employees were required to furnish certain tools used in the business of the Company. That the net amount entered against the gross pay of the employees was used as a base to compute overtime and that if the same amounted to less than the statutory minimum wage they were paid at the minimum rate. Plaintiffs state that the Master should have found that said tools were a necessary incident of the business carried on and should have been paid for by said Company and that the deductions therefor were improper and illegal.

VIII

Plaintiffs object to the Master's finding of fact numbered 9 to the effect that a charge was made to the Company against the earnings of jiggermen to go towards the payment of wages of certain other employees and that if

the net amount of the gross pay of the jiggermen exceeded the statutory minimum wage, the same was used as a base to compute overtime. Plaintiffs state that the Master should have found that any deduction from the wages of one employee to pay for tools used in another employee's work was improper, illegal and unauthorized.

IX

Plaintiffs object to the finding of fact numbered 10 to the effect that employees were required by the Company to perform certain incidental work in connection with other jobs without compensation therefor or that the total weekly compensation paid their employees equal or exceeded the statutory minimum. Plaintiffs state that the Master should have found that the Company was unauthorized to compel employees to do incidental or other work without compensation therefor and that the Company should be made to pay for all work on or about the premises of the employer performed at the employer's request or sufferance or to the profit of the Company.

X

Plaintiffs object to the Master's finding of fact numbered 11 to the effect that the plaintiffs have not sustained the burden to prove that clean-up and set-up work in the Glost Belt Department or the work of changing molds in the Clay Shop was done by employees outside the punched time on their cards, and plaintiffs further object to the Master's finding therein that there is no reliable way to compute the time outside the punched time spent each week in this work and plaintiffs state that the Master should have found that the plaintiffs have sustained their proof, that the clean-up and set-up in the Glost Belt Department and the work in changing the molds in the Clay Shop was done outside the time punched on their cards and the Master should have found that it was work done

by the employees for the Company, was ascertainable and that the Company should pay the employees therefor.

In this connection the Court's attention is called to Page 54 of the Special Master's Report wherein the Master stated that "In the case at bar, if the plaintiffs' claim of 56 minutes extra work per day is well taken, the amount of time can be readily and precisely figured. The same is true if the contention that all the punched time on the cards constituted employment time is correct." In other words, the time on the time clock cards is easily ascertainable. It should be noted that there was no dispute to the fact that employees in the Glost Belt Department did work on Friday nights after they had punched their time clock cards. Furthermore, there is no dispute in the record that the men in the Glost Belt Department went to work on Monday mornings before they punched their time clock cards in. Nicholas Dacko testified that on June 8, 1942, all of the men in the Glost Belt Department were required to work on Monday morning before punching the time clock cards. There is no denial by the Company witnesses of the allegation that the employees worked on Monday mornings without being paid therefor. Willard Steif, a foreman, told Dacko and other employees to get to the plant on Monday mornings "to unload a car or two just as we told you to do." This refusal to pay men for time worked constitutes a plain fraud upon the workers and the Master should have recognized the obligation of the employer in this respect.

XI

Plaintiffs object to the Master's conclusion of law numbered 2 to the effect that the defendant, The S. S. Kresge Company, is not an employer of the plaintiffs or the employees represented by them within the meaning of the Act for the same is contrary to law and states that the Master should have found that The S. S. Kresge Com-

pany was an employer of these plaintiffs and the employees represented by them within the meaning of the Fair Labor Standards Act. The Special Master on Page 10 of his Report cites some cases under the National Labor Relations Act and does not bother to determine whether the meaning of the term "employer" under the N.L.R.B. Act is the same as that under the Wages and Hour Law. Under the latter, however, any person who directly or indirectly affects the employment relationship is deemed an employer. Particular objection has been made to the Master's finding that whether or not the Kresge Company is an employer is of "relatively little practical importance" because an affidavit is on file that the Pottery Company is able to respond to judgment. This is a highly erroneous conclusion of law and under such a theory a joint tort feasor might be released because another defendant is financially able to respond in damages.

XII

Plaintiffs object to the Master's conclusion of law numbered 5 to the effect that the inspection of the Pottery Company's records by the United States Department of Labor, Wage and Hour Division, are irrelevant to the determination of this suit brought by employees under this Act and is contrary to law and plaintiffs state that the Master should have found that such evidence is competent and that the Administrator's rulings and findings do have persuasive weight and constituted competent evidence.

XIII

Plaintiffs object to the Master's conclusion of law numbered 6 to the effect that plaintiffs have the burden of proof to say that they spent time in their employment which the Company did not give them credit for as being contrary to law and plaintiffs state that the Master should have found that the plaintiffs have established by a preponderance of the evidence that they spent time in the

employment of the Pottery Company for which the Company did not give them credit or payment and that the Company should be compelled to account therefor. The plaintiffs specifically call attention of the Court in this connection to the case which the Master did not have available to him at the time he made his conclusions herein and that is, the case of Tennessee Coal and Iron Company vs. Muscoda, Local No. 123 decided March 16, 1943, by the U. S. Circuit Court of Appeals for the Fifth Circuit and found in Volume 6, Wage and Hour Reporter, Page 288. The Court in affirming judgment for approximately $250,000.00 for the employees found that employees should have their time computed from the time when they check in at the portal of a mine. They are to be paid from the time traveling therefrom to their regular work places and the time spent in returning therefrom to the portal of the mine. This decision with its far-reaching consequences has clarified the issue in such a case as this where the Pottery Company did not pay the employees for the time shown on their time clock cards but adopted an arbitrary figure of approximately 14 minutes later than when the employees were checking in. The case has added weight because it set aside the long standing contractual arrangement between the United Mine Workers and the mine owners and compels the employer to include in the computation of a week's work the time consumed each week in traveling from the portal of the mine to the employees' regular places and returning therefrom to the portal at the end of the shift "plus the aggregate of the time consumed each week by such employees in checking in and out and obtaining and returning tools, lamps, and carbide on the surface, or whether they were entitled to have any part of such time included in the working time comprising the workweek." The Circuit Court decided "after considering these and other facts of a similar nature the Court below found as a fact that all of the time consumed was work time and should have been included in the computation of the employees' work week."

The Court held that this travel time was spent on the employer's premises and subject to the employer's directions. That case is exactly parallel to the Pottery Company, which after the employees punched the time clock assigned them to benches near to or far removed from the time clocks. That was a matter that was within the direction of the employer as the Administrator has ruled.

We also call attention to the decision of Judge Raymond of the United States District Court for the Southern District of Michigan, Western Division in the case of Fleming vs. Rex Oil Company, 43 Fed. Supp. 950, that time spent on or near the employer's premises must be paid for. We also submit to the Court the case of Sunshine Mining Company vs. Carver, decided August 27, 1941 (Volume 4, Wage and Hour Reporter, Page 480) where it was held that time spent by employees of a mining company in traveling from portal to portal of a mine is working time for which compensation is due employees under the Act. Federal Judge Cavanah stated that

> "The place designated at the portal of the mine on its premises is the place where the workmen are to appear at a specified time. The workman offers himself there at a specified time and is under the control and direction of plaintiff (mining company) who agrees to designate the place of work and the manner provided by it and who created the situation necessary in operating its mine.
>
> It may be a short distance or a long distance from the portal of the mine and the travel time consumed from the time the workman appears at the portal of the mine and the travel time consumed to their designated place of work and the travel time consumed in returning to the portal of the mine should be considered and included in 'hours worked.' Employment of the workmen under such circumstances, begins when they reach such entrance of the mine."

It should be noted that the Master on Page 32 of his Report stated that "it is true that in many instances the cards of a particular employee show that over a considerable period of time he rang in regularly at approximately 14 minutes before the time he was credited with starting." His conclusion of law and findings of fact to the effect that an employee should not be paid for this time are, therefore, clearly erroneous. The Master states further that "it is conceded by the Company witnesses that the preliminary duties of a personal nature were supposed to be, and usually were, performed in advance of the established starting time," Page 30, Master's Report. We submit that the employees were on the employer's premises, at the employer's request and ready for work when they punched the time clock cards and makes a finding for the employees mandatory. The Court in the Tennessee Coal and Iron case, supra, has held that a contrary custom or even a contract is immaterial, yet the Master in this case permitted the introduction of evidence of not only practices of other companies in this industry but even other companies in entirely different areas and entirely different types of business (Page 26 Master's Report). A substantial part of the Master's Report is based on industrial custom in the use of time clocks (See page 26 Master's Report). There is some confusion in the Master's conclusion on Page 37 of his Report to the effect that he is unable to understand whether the employees between the time indicated on the time clock cards may not have spent time for their own purposes. The language has become mixed and the Master arrives at a conclusion that "there would seem to be no basis on the record for the conclusion that the employees worked continuously up to the time they punched out." Under the Tennessee Coal and Iron case, supra, the Circuit Court has taken a much more realistic view as to what happens when an employee punches in in a modern industrial plant. However, the Master in this case has actually based his reasoning and sets forth the contract which the United Mine Workers had and which was thrown out by the Circuit Court in the

Tennessee Coal and Iron case, supra. It is true that the Master did not have the benefit of this decision when he issued his report. He states, on Page 49 of this Report, "In bituminous coal mines, however, the custom, as embodied in collective bargaining contracts with the United Mine Workers, excluded travel time from working time." This conclusion, the Master will admit, is now specifically set aside by the decision in the Tennessee Coal and Iron case, supra.

XIV

Plaintiffs object to the Master's conclusion of law numbered 7 to the effect that plaintiffs have not established that work was done by them which the Company did not credit them for, with the possible exception of preliminary work, and plaintiffs state that the Master should have found that the employees performed work for which the Company did not compensate them, including preliminary work.

XV

Plaintiffs object to the Master's conclusion of law numbered 8 to the effect that a computation of the time spent in preliminary work by each employee each week and not credited to him by the Company cannot be made except upon a speculative basis, and accordingly forms no basis for a recovery of overtime pay and states that the Master should have found that the work performed by each employee, with minor exceptions, is determinable by examination of the time clock cards and that the employees have not been paid upon such a basis their overtime pay.

XVI

Plaintiffs object to the Master's conclusion of law numbered 9 to the effect that no violation of the minimum wage or overtime provisions of the Act are involved in

the defendants' practices relative to deductions for tools and plaintiffs state that the Master should have found that said deductions violated the provisions of the Fair Labor Standards Act. Plaintiffs point out to the Court that the Master, himself, found (Page 58 Master's Report) that in "fixing the charge for the different kinds of equipment involved the Company generally made a mark-up over its out-of-pocket cost ranging up to 33 1/3%, the figure which, in the opinion of the general manager, Doll, was necessary to cover overhead and handling expense." The Master as a conclusion of law has erroneously determined that the employer has the exclusive privilege of marking up goods sold to employees and profiteering therefrom. The Master also found (Page 59, Master's Report) that "The total purchases of sponges by all employees was estimated by Mr. Doll at not more than $2,500.00 per year and of other supplies at not more than $500.00 or $1,000.00 per year." The Master erroneously states the law to be that "deductions for tools can be made by the employer if, and only if, the deductions do not cause the employees' resultant wages to go below the statutory minimum. Since that result was not produced in the case at bar, the question of profit is not involved." This is entirely erroneous and if this rule is permitted to stand the employer obligated to pay the employee one dollar an hour and time and one-half for overtime can make any profiteering deduction he wishes from the wages even without the consent of the employee if the result is that the employee's wage is not reduced below the minimum. The Fair Labor Standards Act anticipated the danger of employers' profiteering and included therein (Section 11(c) of the Act) that deductions from stipulated wages could be made for board, lodging or other facilities at the cost of the item for which deduction is made. The Master admits and finds as a matter of fact herein that the Pottery Company made a profit of 33 1/3% on the tools, sponges, etc. which it furnished employees.

The finding of the Master to the effect that the employer is permitted to thus profiteer on his employees is an erroneous conclusion of law which if not reversed may lead to other outrageous consequences.

XVII

Plaintiffs object to the Master's conclusion of law numbered 10 to the effect that no violation of the Act is involved in the deductions for the service of other employees charged to the jiggermen as contrary to law and plaintiffs state that the Master should have found that the employer is not permitted under the Act to make unauthorized deductions from the wages of jiggermen or other employees for services rendered the employer by other employees.

XVIII

Plaintiffs object to the Master's conclusion of law numbered 11 to the effect that no violation of the Act is involved in defendants' practices relative to payment or non-payment for work incidental to the employees' jobs, such as clean-up work as the same is contrary to law and the Master should have found that employees should be paid for time spent on employer's premises doing work at the request or sufferance of the employer for the benefit of the employer.

XIX

Plaintiffs object to the Master's conclusion of law numbered 12 to the effect that no violation of the minimum wage requirement of the Act is involved in defendants' practice in paying beginning women employees at lower piece rates than experienced workers under the facts found here as the same is contrary to law and the Master should have found that under the facts found herein the employer is determined to have paid women employees at lower piece rates than experienced workers and the rates

so paid violated the minimum wage provisions of said Act.

The plaintiffs object to the conclusions of the Special Master found on Page 69 of his Report to the effect that plaintiffs have not established by fair preponderance of evidence violations by the defendants of the Fair Labor Standards Act and that the complaint should accordingly be dismissed for the reason that the same are contrary to the facts and law herein and that the Master should have found that upon the basis of the Record the evidence herein, the plaintiffs and other employees represented by them herein have by fair preponderance of the evidence proven violations of the Fair Labor Standards Act of 1938 and that by reason thereof plaintiffs and other employees represented by them herein should be granted judgment and the defendants compelled to account for the sums owing said plaintiffs and other employees represented by them herein.

Plaintiffs by way of objecting to the Master's findings herein point out to the Court the following:

(1) That although the Master has before him evidence of the payment by the Company of a sum of approximately $2,000 in 1939 under the auspices of the Wage and Hour Division, yet said Master has failed and refused to take cognizance of these plaintiffs and other employees that under the provisions of the Act and under the rulings of this and other Federal Courts said plaintiffs and other employees represented by them are as a matter of right entitled to liquidated damages thereon.

(2) The Special Master herein has not found or reported to the Court the method by which the employer has violated the Act herein and failed to pay the employees herein for overtime wages. The Company took the total pay of the employees in any work week and divided it by the number of hours worked. The employee

never heard of the method of computation of his wages until some time after the wages were paid him and at no time were overtime wages paid in accordance with the Act.

(3) The Master has in his report permitted the employer to balance work weeks and even sanctioned the deduction of vacation and other time off as a means of showing that the employees are not entitled to compensation at the rate of time and one-half for hours worked in excess of the statutory number in each work week.

(4) Particular objection is taken to the Special Master's conduct of the hearing and the report filed herein because of his acceptance of evidence of the custom of other industries in computing time worked by the employees and this has appeared particularly erroneous since the Tennessee Coal and Iron decision, supra.

General objection is hereby taken to the acceptance of immaterial evidence by the Special Master and his refusal to permit the plaintiffs to introduce competent and proper testimony proffered at said hearing.

Objection is further taken to the erroneous findings of fact and conclusions of law duly noted at the time of said hearing and appearing on the Transcript of Record herein.

Wherefore, plaintiffs ask that the Special Master's Report may be modified, that the objections herein be sustained, and that judgment be entered on the record herein in favor of the plaintiffs and other employees represented by them herein.

Respectfully submitted,

Edward Lamb,
Counsel for the Plaintiffs, etc.
1014 Edison Bldg.,
Toledo, Ohio.

MOTION OF DEFENDANT, MT. CLEMENS POTTERY COMPANY, FOR ENTRY OF JUDGMENT ON REPORT OF SPECIAL MASTER.

(Filed April 3, 1943)

Now comes the defendant, Mt. Clemens Pottery Company, by Beaumont, Smith & Harris and Bert V. Nunneley, its attorneys, and makes application to this Court for the entry of a judgment in said cause dismissing the complaint as to The Mt. Clemens Pottery Company with costs to be taxed, in accordance with the report issued herein by Honorable Donald L. Quaife, Special Master, under date of March 23, 1943. This motion is based on the files and records of the court in this cause.

Beaumont, Smith & Harris,
11th Floor, Ford Building,
Detroit, Michigan,
Bert V. Nunneley,
Mt. Clemens, Michigan,
Attorneys for Defendant,
Mt. Clemens Pottery Company.

Dated: April 2, 1943.

ORDER DISMISSING CAUSE AS TO DEFENDANT S. S. KRESGE COMPANY

(Filed June 15, 1943)

At a session of said court, held in the Federal Building, in the City of Detroit, said District and Division, on this 15th day of June, A. D. 1943.

Present: The Honorable Frank A. Picard, District Judge.

In this cause, the defendant S. S. Kresge Company having filed and presented its Motion to Dismiss the Complaint and Amended Complaint of plaintiffs, which Motion was renewed at the conclusion of the hearing on the merits;

And it now appearing to the Court that the plaintiffs have filed a Motion in this cause for an Order dismissing the cause as to the defendant S. S. Kresge Company with prejudice and without the assessment of costs;

On motion of Frank H. Boos, attorney for the defendant S. S. Kresge Company, it is Ordered that the Complaint and Amended Complaint of the plaintiffs in this cause be and the same are hereby dismissed as to the defendant S. S. Kresge Company, with prejudice and without the assessment of costs, under sub-paragraph (b) of Rule 41.

This dismissal with prejudice applies not only to the named plaintiffs but also to all other persons similarly situated who have made and filed in this cause their designation in writing authorizing the named plaintiffs to prosecute the Complaint and Amended Complaint for and on their behalf.

Frank A. Picard,
District Judge.

OPINION OF THE COURT

(Filed July 2, 1943)

This is an action brought by certain employees for claimed violation by defendant of the Wages and Hours Act. Plaintiffs, who are piece workers, allege in part that defendant required them to report for work at 14 minutes previous to the hour designated for starting; that invariably they began their labors shortly thereafter but were paid only from the official hour for the opening of the plant. Then in addition to being required to come early it is their claim that they would work 14 minutes after the morning closing hour and only get paid up to noon; 14 minutes before the official time for starting work after noon lunch, being paid from the official hour only and that this same practice prevailed at the closing hour—so that in all plaintiffs allege that they worked about 56 minutes every day for which they received no compensation in computing their overtime.

There are also other differences more or less of a minor nature or individual, among those being the custom of the art, seemingly from time immemorial, that workers engaged in certain features of pottery making must furnish their own sponges and tools; that the company made a profit on the items so sold to help take care of its overhead; and that certain employees, commonly called jiggermen, were required to contribute to the pay of helpers who would take the culls or the blemished work of the jiggermen and by polishing would deliver a piece of pottery acceptable to the standard set by the company.

The matter was referred to a Master whose report was entirely in favor of defendant and the question now is simply whether this Court will approve that report.

In the meantime, following argument and before this Court had an opportunity to pass on the question, plaintiffs voluntarily discontinued as to co-defendant Kresge Company, which they sought to hold as sole stockholder of defendant, The Mt. Clemens Pottery Company.

CONCLUSIONS OF THE COURT

We will discuss the vital issues categorically and enumerate our reasons briefly for our position.

1. Extra Time Not Computed

The first question is whether or not defendant required its employees to report for work at 14 minutes to seven o'clock, for example, starting them practically immediately and then computing their hours from seven o'clock, continuing this practice throughout the day as above enumerated, so that in fact the employees worked approximately 56 minutes every day which were not computed in figuring overtime. It may be explained here that such computation is essential even on piece work since the amount of compensation to piece workers for overtime—according to the Administrator's interpretation—is arrived at by dividing the total amount received in piece work by the number of hours worked in a given work week to get an average hourly wage rate, and then paying time and one-half at this wage to piece workers for all time over 40 hours. (See Interpretative Bulletin No. 4, Wage and Hour Division, United States Department of Labor.)

Naturally if the above claim of plaintiffs is true, some would be working almost 5 hours additional every week, which would have brought many of them into the overtime bracket.

On the other hand the response of the company is a complete denial with the explanation that it usually opened its time clocks for punching at 14 minutes prior to some designated hour so that all employees might have an opportunity to punch the clock, prepare themselves for work (such as wearing special gloves) and so that all would be ready to begin work when the official time arrived.

It is further claimed that pottery in the main is made through the working of groups or crews and by requiring the employees to be ready for active work before the appointed hour each member of the crew would be there at the starting time, work would not be delayed nor an injustice done to the rest of the crew because of some tardy employee's negligence.

This Court, therefore, because of the importance of the issue, instructed that evidence be carefully taken, since if plaintiff's charge was correct we were face to face with a method of employer domination and unfairness that, to say the least, would be most reprehensible, while if defendant's contentions were true this Court would hold that such a rule of the company would not be unreasonable. It must be borne in mind, however, that under no circumstances would it justify defendant in starting, or permitting these employees to work before the scheduled hour. This conclusion is fundamental because it must be apparent that to hold otherwise would permit employers of piece workers to circumvent the objectives of this law and the purpose of the Wages and Hours Act might be entirely frustrated.

On this first point the Master held with the employer and found that the allegations of plaintiffs were not true. Nevertheless, and while in the main agreeing with him, there is sufficient evidence to require more careful scrutiny by this Court of the foundation for this report and

therefore we have re-examined the evidence, paying particular attention to the time cards. Here we noticed what we deem to be significant, to-wit, we found that whenever the starting hour was seven o'clock the punching of the clock did begin at 14 minutes to seven and by nine minutes to seven o'clock 75 per cent of that shift had registered for work. By eight minutes to seven but a few stragglers were left. Undoubtedly those who were unable to punch the clock in the first four minutes could be preparing themselves for work, but the preparation even after punching the clock wouldn't take more than one or one and a half minutes and to the farthest point in the plant from the time clock wouldn't take more than 2 minutes. It is apparent, therefore, that practically every member of the entire shift was ready to work at from 5 to 7 minutes before the hour, and it does not seem probable that with compensation set by piece work, and the crew ready, that these employees didn't start to work immediately. In fact, it appears that this was encouraged by the company as being mutually beneficial.

It was also required by defendant company that certain changes of clothing were necessary at the plant before the employees went to work and on their own time. This is a questionable practice but for the individual in the case at bar this didn't take long—probably one minute to make the change. It appears to this Court, however, that if the company requires certain specified clothing and practically prohibits the employee from preparing for his work at home, that any such rule should be met on company time, because the one minute or two minutes it takes is just as valuable to the employee as it is to defendant company.

Going further into the record we find that the evidence was not seriously controverted that the foremen told the employees when work would start in the morning and when to get there, and when they told them that work

would start at 6:45 o'clock they likewise mentioned the hour of 6:31, or if 7:00 A. M. was the starting time then 6:46 was also designated in some manner.

With this picture before us we cannot help but believe that there was a method in this formula beyond that expressed by defendant's witnesses.

With one thousand employees working every day minutes could grow into hours and hours into days of overtime. To the individual employee it may have meant little or nothing for each day, but in the period of a year it meant hours and to the company a few minutes taken from each employee each day would mean a great deal financially. But in this connection may we not add that there is no evidence, as contended for by plaintiffs, that if the employee didn't get there at 14 minutes to seven he was fired, and there is much testimony to prove that stragglers came in as late as one minute to seven o'clock. And even defendant's witnesses admitted that at times when a crew was ready to work they might jump the gun. In the experience of this Court that's just exactly what would happen 99 times out of 100 on piece work and it was one of the practices that the Wages and Hours Act sought to discourage both on the part of employer and employee. To us it is obvious that in this particular action an attempt was made either by the company itself or by certain foremen in currying favor with the employer, to circumvent the spirit of the Wages and Hours Act.

We are then confronted with the question of whether this Court should lend its aid to a practice that deprives any working man of that which is the only thing he has to sell—his hours or minutes of labor.

We think not—and we hold, therefore, that allowing 5 minutes for punching the clock plus an additional 2 min-

utes to go from the clock to their place of employment, or a total of 7 minutes, should be allowed to defendant as not an unreasonable provision but that all minutes over that time as shown by the time cards in the morning and all over 5 minutes at the beginning of the afternoon work should be computed as part of the hours worked by these employees.

As to punching out at noon and in the evening, we find no evidence that the employees worked after the closing hours either at noon or at night for which they were not paid. This may have happened, but if so it didn't seem to be prevalent and it further appears that both at noon and at night many personal duties might and did occupy the employee's time before he actually punched out.

We cannot hold with plaintiffs that they are entitled to pay right from the minute they punched the clock. Even in the case of Tennessee Coal, Iron and Railroad Company v. Muscoda Local 123 (C.C.A. 5, 1943), 6 Labor Cases, paragraph 61,499, where portal to portal pay was allowed the coal miners, no attempt is made to compensate the miners for changing their clothes and getting their picks and shovels ready for work—all of which took at least 10 minutes. As a matter of fact, if this Court is to rely upon that decision plaintiffs are entitled to nothing here.

2. Furnishing Tools

The second point relates to the practice of the company in requiring employees to buy their own tools, particularly sponges, following out an old custom in the pottery industry. The claim of plaintiffs that this practice is unlawful is based upon Section 3(m) of the Fair Labor Standards Act and regulations of the Administrator of the Wage and Hour Division pursuant thereto. Section 3(m) states:

"(m) 'Wage' paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees."

The Administrator has promulgated elaborate regulations as to what constitutes "facilities" within the meaning of this section and the standards and methods for determining "reasonable cost" when the section is applicable. (Official Regulations, Part 531.) Section 531.1(d) of the said regulations states that tools and other materials used in the employer's business are not "facilities" which can be considered in computing wages under Section 3(m) of the Act. But sponges and whatever other tools plaintiffs bought for their own use were not "customarily furnished by such employer to his employees"—as the act provides. On the contrary, these employees have been furnishing their own sponges and tools for years, as we are informed.

This Court is sympathetic with the position of employees on this issue, since it seems only fair that the employer furnish the working appliances used by employees in the operation of his business. Doubtless, the trend in industry is in this direction, and when such practice becomes universal no employer will suffer a competitive disadvantage by following it. While it may be true, as claimed by the company, that employees are less inclined to waste sponges when they must furnish them, still the expected life of a sponge is so well known that employees guilty of abuse of the employer's property can be detected and discharged for cause or otherwise punished. In any event, the possibility of abuse by the laborer is no greater than the possibility of some employers taking advantage of the laborer if so permitted, as is gleaned from the well known fact that a few

years ago in some industries the laborer at times had to buy so much back from his employer that he owed him money above his wages at pay time.

However, the Court is not here faced with a problem of economic policy, but rather with that of interpreting and applying the Fair Labor Standards Act; and careful study of the Act fails to reveal any basis upon which the practices of defendant in making deductions for tools and equipment used in its business can be found to be prohibited. Section 3(m) is not applicable. That section relates to a situation where wages are paid partly in cash and partly in food, lodging, or some other thing for the personal benefit of the employee. Where that section applies, the cash wages may be less than the minimum, as long as the reasonable cost of the facilities makes up the difference. This Court, however, agrees with the Administrator in holding that tools of the trade are not "facilities" within the meaning of Section 3(m) and that deductions for such items cannot be made by the employer if they cause the wages to go below the statutory minimum. However, since it appears here that the pay received by defendant's employees after the deductions for tools and equipment equalled or exceeded the statutory minimum, no violation of the minimum wage requirements is involved. And, since it appears that the employees worked with full knowledge and understanding of the company's practice with respect to their being charged for tools, their regular rate of pay for purposes of computing overtime was the pay after deductions.

No claim is made that the company manipulated the deductions so as to take them only during overtime weeks and thus evade liability for overtime. There appears to be no separate prohibition of deductions in the Fair Labor Standards Act, apart from the minimum wage and overtime requirements, and, for the reasons stated, no violation of those requirements appears. In the case of Wal-

ing v. Peavy-Wilson Lumber Co., 6 Labor Cases, Par. 61,561 (D.C. La. 1943), relied upon by defendant, it appeared that the great majority of the employees were receiving bare minimum wages; and, while the opinion is not entirely clear on the point, it would seem that the Court's holding that the laborers should be furnished tools free of charge was based upon the fact that the charges therefor cut the employees' wages below the minimum.

We wish to add that our decision upon this issue is not based upon the fact that it has been customary practice in the industry to make such deductions, since it is clear that any custom inconsistent with the requirements of the Act must yield to the latter.

3. The Jiggermen

The next question before us is that of the jiggermen. Ordinarily we would feel that the jiggerman should not be compelled to contribute towards the wages of another worker were it not for the following facts.

These laborers do the work that the jiggerman should have done. It is work that does not require great experience, nor the adeptness and touch of the jiggerman, who is admittedly the highest paid among pottery workers and an artist in his line. It is only the culls and the possible defective pottery that is turned over to the laborer. He finishes the work. The jiggerman gets paid for it. We believe he should contribute part of the compensation to the man who helps do his work for him. It's an old practice coming down through the years and almost makes the jiggerman an independent contractor. We don't see why we should interfere with this custom or that its continuation is an abuse of either the letter or spirit of the law.

4. Other Claims

Many other miscellaneous claims are raised by plaintiffs but to us they appear to be without merit and in these we hold with the Master.

5. Double Damages

To the plaintiffs' contention that this Court should give double damages on a prior settlement between the parties we cannot consent. This claim came out of a blue sky without any direct plea being made in the pleadings or at any time in the argument until just before this Court was ready to write its opinion. That settlement was not at issue here. It had been agreed upon long ago and if this Court is to give double damages on a settlement it knows nothing about, the merits of which were never presented to the Court at all and which may have been an entirely voluntary gesture on the part of defendant to avoid litigation, we are opening the door to a lot of prospective trouble. But if this decision results in any additional compensation to the plaintiffs or any of them, of course, double damages will be allowed therefor.

The question of the attorney fees for plaintiff and payment of costs is a matter for settlement by this Court on motion of the parties.

An order consistent with this opinion approving the report of the Master may be prepared for this Court's signature.

(Signed) Frank A. Picard,
United States District Judge.

Dated: ~~June 30th~~ July 21, 1943.

~~MOTION TO SETTLE~~ FINDINGS OF FACT, CONCLUSIONS OF LAW AND FOR JUDGMENT

(Filed ~~Aug. 25~~ July 7, 1943)

This cause came on to be heard upon the complaint filed by Steve Anderson, Earl Trombley, Lillian Socia, Albert Watkins, The United Pottery Workers, an unincorporated trade association, and others in behalf of themselves and other employees similarly situated, employees of The Mt. Clemens Pottery Company and the S. S. Kresge Company, the respective answers of the defendant companies, the pleadings, the Report of the Special Master and the evidence adduced by the respective parties hereto.

The parties hereto consenting to trial herein without intervention of the jury, the same was submitted by the Court to a Special Master for the taking of evidence, findings of fact and conclusions of law, and the Court being fully advised in the premises, upholds the findings and conclusions of the Special Master, with the following amendments thereto, and enters judgment thereon for the reasons more fully set forth in the Opinion of the Court filed in this action on or about June 30, 1943.

FINDINGS OF FACT

The Court in amending the Findings of Fact and Conclusions of Law of the Special Master, finds and enters its judgment herein as follows:

I

That Steve Anderson and the other individual named plaintiffs, as well as those employees who have filed their

authorizations herein, were all employees of The Mt. Clemens Pottery Company for the purpose of establishing their claims under the Fair Labor Standards Act of 1938, and that each of said employees were engaged in the production of goods for interstate commerce and were subject to the Fair Labor Standards Act of 1938, and that the Court has jurisdiction of this cause.

II

That each of said employees claimed to have worked as much as 56 minutes every day and that said time was not computed in determining working time. That said claim arose by virtue of said employees being required to report in for work in the morning at approximately 14 minutes to the quarter hour and that the employees were not given credit for working time until the subsequent quarter hour. That said employees in the afternoon likewise claim to have been required to report in at as much as 14 minutes before the quarter hour and that their time was only computed from the subsequent quarter hour. That in leaving said plant at noon and in the evening, said employees claim that they were likewise deprived of credit for the time shown on their time cards except from the following quarter hour.

III

That said employees were for the most part employed on a piece-work basis. That said employees are entitled to compensation even though employed upon a piece-work basis at the rate of time and one-half their regular rate for that time worked beyond and above the statutory number of hours fixed by the Fair Labor Standards Act of 1938.

IV

That whenever the starting hour was seven o'clock in the morning, the punching of the clock began at 14 min-

utes to seven and that by nine minutes to seven o'clock 75% of that shift registered for work, and by 8 minutes to seven but a few stragglers were left. Undoubtedly, those who were unable to punch the clock in the first four minutes could be preparing themselves for work, but the preparation even after punching the clock would not take more than one or one and one-half minutes and to the farthest point in the plant from the time clock would not take more than two minutes. It is apparent, therefore, that practically every member of the entire shift was ready to work at from five to seven minutes before the hour, and it does not seem probable that with compensation set by piece work, and the crew ready, that these employees did not start to work immediately. In fact, it appears that this was encouraged by the company as being mutually beneficial. It was also required by defendant company that certain changes of clothing were necessary at the plant before the employees went to work and on their own time. This is a questionable practice but for the individual in the case at bar this did not take long—probably one minute to make the change. The Court finds that if the company requires certain specified clothing and practically prohibits the employee from preparing for his work at home, that such activity should be met on company time, because the one minute it takes is just as valuable to the employee as it is to the defendant company.

V

The Court further finds, and the evidence does not seriously controvert it, that the foremen told the employees when work would start in the morning and told the employees when to get there, and when they told them that work would start at 6:45 o'clock, they likewise mentioned the hour 6:31, or if 7:00 A. M. was the starting time then 6:46 was also designated in some manner. We believe and find that there was a method in this formula beyond that expressed by defendants' witnesses. It is obvious,

and the Court so finds, that in this particular action an attempt was made either by the company itself or by the certain foremen in currying favor with the employer to circumvent the spirit of the Wages and Hours Act. This Court does not lend its aid to a practice which deprives any working man of that which is the only thing he has to sell—his hours or minutes of labor.

VI

The Court finds and so holds, therefore, that there should be allowed five minutes for punching the time clock plus an additional two minutes to go from the clock to the employees' place of employment, or a total of seven minutes should be allowed to the defendant company in the morning but that all minutes over that time as shown by the time clock in the morning and all minutes over five minutes at the beginning of the afternoon work should be computed as part of the hours worked by these employees. For the purpose of determining the amount of overtime worked by the plaintiffs or the employees represented by them herein, the defendant, Mt. Clemens Pottery Company, shall make a computation of the hours worked in excess of the statutory number fixed by the Fair Labor Standards Act of 1938 and submit the same, together with an account of the wages owing, if any, to each of said employees and file the same with this Court and, if said accounting is correct, the Court herein will enter judgment thereon. Said account shall be filed with this Court within thirty (30) days from the date hereof.

VII

The Court finds that counsel for the plaintiffs have rendered extensive services herein which have been of substantial value to the determination of the issues herein and that under the provisions of Section 16(b) of the Fair Labor Standards Act of 1938, counsel for the plaintiffs

6

is entitled to attorney fees to be paid by the defendant, Mt. Clemens Pottery Company. That judgment accordingly is entered in favor of plaintiffs' attorneys the same to be fixed in the amount of $..... That the amount fixed by way of fees, as aforesaid, is determined to be reasonable in view of the extensive preparation and trial of the issues herein involving approximately several hundred employees and involving more than forty-five full days of actual trial work and more than sixty full days of examination of records, pleadings, time clock cards and other data, that the amount so fixed by the Court herein is the result of evidence adduced upon the motion of the plaintiffs filed in accordance with the instructions issued in the opinion of the Court and filed herein on or about June 30, 1943. That judgment is also granted herein for plaintiffs' expenses, for accounting, bookkeeping and stenographic services amounting to $1000.00.

VIII

That Court costs herein in the amount of $..... are taxed against the defendant and that the defendant should pay the fees of the Special Master in the additional amount of $.....

IX

Under the provisions of the Fair Labor Standards Act the Court finds that in 1939 a sum less than $3,000.00 was paid under the auspices of the Wage and Hour Division of the United States Department of Labor as unpaid overtime compensation accruing to certain employees, including among others, plaintiffs and others represented herein. The Court finds that liquidated damages thereon were not paid. The Court does not find that said employees under the pleadings herein are entitled to liquidated damages on said settlement or the restitution so made under the auspices of the Wage and Hour Division

of the United States Department of Labor in 1939, but the findings herein are upon the basis that said issue was not properly raised herein and said findings are without prejudice to the rights of said employees to assert such claims as may be proper in the premises.

X

The Court, in ordering an accounting upon the basis of the finding numbered VI herein, determines that if compensation is owing to the plaintiffs or any of them, liquidated damages will be and hereby are allowed thereon.

CONCLUSIONS OF LAW

The plaintiffs and those who are represented by them herein are entitled to recovery from the defendant, Mt. Clemens Pottery Company, the sums found due by the Court herein in its opinion filed June 30, 1943, after an account is furnished by the defendant, Mt. Clemens Pottery Company, which accounting shall be filed with this Court within thirty (30) days hereof and shall set forth the amounts said employees are entitled to, if any, as overtime compensation found to be due under the provisions of the Fair Labor Standards Act of 1938 upon the basis that each employee shall be paid for time shown on their respective time cards after a deduction of seven minutes in reporting to work in the morning and five minutes for reporting to work in the afternoon for all time worked in excess of the statutory number of hours in each of the workweeks since October 24, 1938, as unpaid overtime compensation and for an additional equal amount as liquidated damages. That the defendant pay the Court costs herein in the amount of $..... and attorneys' fees to plaintiffs' counsel in the amount of $....., and plaintiffs' accounting, bookkeeping

and stenographic services in the amount of $1,000.00, for all of which judgment should be and the same is hereby awarded.

It Is, Therefore, Ordered, Adjudged and Decreed that the defendant pay the judgment set forth aforesaid, the Court costs herein taxed at $..... and attorneys' fees to Edward Lamb and Lowell Goerlich in the amount of $....., for all of which judgment is rendered accordingly and that the judgment, orders, findings and decrees herein are made without prejudice to the rights of plaintiffs to file a new action for overtime compensation accruing for the time subsequent to the filing of the complaint herein or for liquidated damages accruing upon or restitution made in 1939 under the auspices of the Wage and Hour Division of the United States Department of Labor.

.....
Judge, U. S. District Court.

Copy of the above has been served on Attorneys Beaumont, Smith & Harris, Ford Bldg., Detroit, Michigan, and Nunnely & Nunnely, Mt. Clemens, Michigan, this 6th day of July, 1943.

Edward Lamb,
Lowell Goerlich,
Attorneys for Plaintiffs.

MOTION FOR SUPPLEMENTAL AND ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed ~~Aug. 25,~~ July 7 1942)

Plaintiffs in the above entitled cause by their attorneys respectfully move the Court to make and enter the following additional (a) special findings of fact and to declare and enter the following additional (b) conclusions of law in said case, to-wit:

FINDINGS OF FACT

I.

The defendant, Mt. Clemens Pottery Company, required the plaintiffs and other employees represented by them herein to buy their own tools, including sponges, scissors, pails and other articles of employment. That these articles are facilities within the meaning of the Fair Labor Standards Act of 1938 and the Regulations of the Administrator of the Wage and Hour Division made in pursuance thereof. That said tools were used by the employees in pursuance of the business of the employer. That said practice has continued for many years prior to the institution of the action herein. That said Court finds that the employer should furnish the working appliances used by the employees in the operation of employer's business. The Court finds that the employer has violated the provisions of Section 3(m) of the Act and Sections 531.1(d) and other provisions of the Administrator's Regulations and that said deductions were improper and illegal in that they constituted a violation

of said Act and that the employer should reimburse said employees for the tools and other facilities so charged to the employees since October 24, 1938.

II.

The Court finds that jiggermen have been compelled to contribute towards the wages of other workers. That the work performed by said workers was for the sole and exclusive benefit of the employer. That the jiggermen are employees of the employer within the meaning of the Act and not independent employers or independent contractors and the Court, therefore, finds that the employer should reimburse jiggermen for deductions made from their wages as contribution to the wages of other employees.

CONCLUSIONS OF LAW

I.

In the year 1939 the defendant, Mt. Clemens Pottery Company, made restitution of certain unpaid overtime compensation as shown on Exhibit 29 in the Records of this case which amount accrued to said employees by reason of the defendant's attempt to balance or offset work weeks on a by-monthly basis rather than upon a weekly basis. Since said claim accrued under the Fair Labor Standards Act of 1938, the Court finds that under and by virtue of Section 16(b) of said Act said employees as a matter of law are entitled to liquidated damages in an additional equal amount for which sum judgment is hereby entered.

II.

Under the law and the evidence the plaintiffs are, therefore, entitled to (a) recover from the defendant, Mt.

Clemens Pottery Company, all sums deducted from their wages for tools, including sponges, scissors and pails and (b) the jiggermen are entitled to recover monies deducted from their wages for the purpose of paying wages to other employees and (c) plaintiffs and other employees represented by them herein are entitled to recover from the defendant liquidated damages in the amount of $....., representing monies owing under Section 16(b) of the Act and which sums were paid in 1939, as shown on Exhibit 29 in the Records of this Case.

.....
Judge, U. S. District Court.

Copy of the foregoing Motion for additional findings of fact and conclusions of law has been sent to Beaumont, Smith & Harris, Ford Bldg., Detroit, Mich., and Nunneley and Nunneley, Mt. Clemens, Michigan, counsel for defendant, this 6th day of July, 1943.

Edward Lamb,
Lowell Goerlich,
Attorneys for the Plaintiffs.

MOTION OF DEFENDANT REQUESTING ADOPTION OF FINDINGS AND CONCLUSIONS

(Filed Sept. 3, 1943)

Now comes The Mt. Clemens Pottery Company, defendant in the above entitled cause, by Beaumont, Smith & Harris and Bert V. Nunneley, its attorneys, and moves that the Court adopt and enter the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Except as hereinafter specified, all of the findings of the Master, and the Master's report, are hereby confirmed and adopted as the findings of the Court. The Court further finds:

2. Any time spent by employees before the regular starting time in so-called "preliminary work," as referred to in the Master's report (and defined at page 25 of the Master's report as including (a) personal preparations such as putting on overalls, greasing arms, etc., and (b) activity of a non-personal nature such as turning on switches, opening windows, etc.), was counterbalanced by time lost on occasions when the employees started work after the regularly scheduled starting time or quit before the regularly scheduled stopping time, but were credited with having worked from the regular starting time to the regular stopping time.

3. There is no showing as to when any individual plaintiff started work on any day, and even if the testi-

mony of the plaintiffs could be accepted it would be utterly impossible to form any reasonably accurate estimate of any amount of time worked by plaintiffs, or any of them, before starting time. On the contrary, any estimate that might be made on the basis of the evidence in this record would be purely conjectural and speculative.

4. If any employee started work on any particular day before the regular starting time the extra time so worked was counterbalanced by time taken off during the day and by time lost through quitting work early.

5. This action was brought in the name of Local 1083, United Pottery Workers of America, affiliated with the C.I.O., and in the names of certain officers and members thereof.

6. The principal issue is whether or not the plaintiffs worked longer hours than are recorded on the books of The Mt. Clemens Pottery Company, the employer of the individual plaintiffs.

7. The claim was also made by plaintiffs that some employees performed certain operations for which they were not paid.

8. The final claim of the plaintiffs was based on the fact that The Mt. Clemens Pottery Company sold certain tools, gloves, etc., to employees. The practice of requiring employees to pay for materials so purchased by them was described as the making of "unauthorized deductions" from the employees' pay.

9. Each department at The Mt. Clemens Pottery Company operated on established starting and quitting times, which were changed from time to time to meet requirements of production. Employees were permitted to check in at the time clocks during a period of 14 minutes before

the established starting time and to check out during a like period after the established quitting time. Employees punched in and out during these 14 minute periods, and their hours of work were computed by the company from the established starting time to the established quitting time. There was no requirement that employees punch in at any particular time except that they were expected to be in their department and ready to go to work at the starting time. Employees were not required to punch-in before the regular starting time. If an employee punched in exactly at starting time, he was treated as having started work then. A copy of the company's record as to the number of hours worked by each employee was transcribed on each time clock card daily, and whenever an employee picked up his card he had before him a record of his hours of work as determined by the company, representing at least all the hours the employee worked.

10. The practice of the Pottery Company in this regard is in accordance with the customary usage followed in substantially all plants in this part of the country. The practice has been followed for many years in the Pottery Company and was well understood by the employees. At least until the filing of this action, no objection was ever made by any employees—either individually or collectively—to the correctness of the company's record of hours worked.

11. Approximately 8 to 10 minutes of the 14 minute period were required to permit the employees to punch through the time clock, and usually more time was consumed in doing this. Not more than about 25 employees per shift punched in at 14 minutes to the hour. It took various employees from 2 to 7 minutes to reach their respective departments after punching in at the time clock, the plant covering more than 8 acres.

12. After reaching their departments, employees spent a certain amount of time (depending in large measure on

how early they punched in) in talking and in waiting for their co-workers to arrive. Some of the workers put on overalls or gloves or finger cots, or greased their arms.

13. The punch-in time (i.e., the interval between the moment the time clock was punched and the time work was begun) of employees on jobs where it was physically impossible to start work before the regular starting time is approximately the same as that of plaintiffs who claim they sometimes started work before the regular starting time.

14. There are and were approximately 12 departments in the plant of The Mt. Clemens Pottery Company. The testimony taken at the trial on behalf of the plaintiffs related solely to 4 departments, viz: Clay Shop, Brushing and Dipping Department, Glost Belt, Decorating Department. There is no testimony by any of plaintiffs' witnesses referable to any possible claims of any employees other than the eight former employees who testified.

15. In the Clay Shop, some of the employees worked on the so-called automatic jiggering machines, and these employees could not start work until the machine was started at the regular starting time. Other Clay Shop employees worked in groups of three, and their work could not begin until the entire group of three was present. It was usually after the regular starting time before the majority of the Clay Shop employees were at work. If some employees started work a minute or so before the starting time on certain mornings, they started after the regular time or quit work early on at least as many other days. None of the employees in the Clay Shop worked longer hours than are shown on the records of the company as hours worked.

16. In the Brushing and Dipping Department, as in the Clay Shop, some of the employees worked in groups

of three, and no individual in such a group could begin work until the entire group was present; and there is no showing that any group was fully assembled prior to the regular starting time on any day. Other employees worked on machines which were not turned on until the regular starting time. The clear preponderance of the credible evidence is that work did not begin until the regular starting time or shortly thereafter. None of the employees in this department worked longer hours than are shown on the records of the company as hours worked.

17. As to the Decorating Department, no employees testified that they began work before the regular starting time, and the testimony is uncontradicted that employees in this department worked somewhat lesser hours than are shown on the records of the company as hours worked.

18. In the Glost Belt Department, work could not begin until the belt was turned on; and it could not be operated until practically a full crew was there. The Belt was regularly started for production purposes at 7:00 A. M. None of the employees in this department worked longer hours than are indicated by the records of the company as hours worked.

19. In no department did work start before the regular starting time, even though a few employees had punched in 14 minutes earlier. It was usually after the regular starting time before work actually started.

20. In all departments, employees frequently took rest periods of their own volition and to suit their own convenience during the day. On the average, employees spent twenty to thirty minutes daily in this manner. During these rest periods of "time out" no work was done, but the time so spent was included by the company as hours worked.

21. In all departments, employees frequently quit work from 5 to 10 minutes before the regular quitting time, but they did not punch out until after the regular quitting time.

22. The record is barren of any testimony rising to the dignity of evidence to the effect that any employee claims any time worked in excess of that shown on the records of the company, at any period of the day except the morning. In fact, the plaintiffs apparently do not claim that they worked after the regular quitting time (either at their lunch period or at the end of the day) or that they started work before the regular starting time following their lunch period.

23. None of the employees worked longer hours in any week than is recorded on the records of the company as hours worked.

24. The testimony of plaintiffs' witnesses (and particularly that of Anderson, Trombley, Socia, Dacko and Pearl) was in many respects vague and contradictory, and shown to be inaccurate and untruthful in many instances.

25. As to the claim of "charity work," so-called, it appears that no employees performed work before ringing in at the clock in the morning or subsequent to ringing out at the clock in the afternoon. It further appears that all employees were fully paid for all work done by them. The piece rates included compensation for incidental work necessary to the production of the units for which the employee was paid.

26. Certain employees, pursuant to a custom of many years standing in the pottery industry, furnished certain tools and supplies. Most of the employees purchased their tools at the Pottery, since they could be obtained cheaper

there than elsewhere. The tools were, in fact, sold by the Pottery at a loss.

27. The Wage and Hour Division inspected The Mt. Clemens Pottery Plant in 1939 and made no complaint as to the correctness of the company's records of hours worked. During the inspection, the company's system of keeping records was fully explained to the inspectors of the Wage and Hour Division, and one of them talked privately to numerous employees for the purpose of ascertaining, among other things, whether the company's records of hours worked were correct.

28. In addition to their agreed wages, employees received extra compensation each year in an amount usually equal to two weeks' pay. There was no obligation to make these payments.

29. Employees were paid a guaranteed regular rate of 30 cents an hour and in addition received such extra compensation at agreed piece rates as might be earned by employees whose production exceeded determined levels.

CONCLUSIONS OF LAW

1. Except as hereinafter specified, all of the conclusions of law reached by the Master, and the Master's report, are hereby confirmed and adopted as the conclusions of the Court.

2. The Court further concludes that plaintiffs have not shown clear error in any respect in the findings and report of the Master, and the same must therefore be accepted by the Court in accordance with the Court rules in such case made and provided.

3. The Court concludes, however, that plaintiffs' acquiescence for many years in the methods employed by defendant company in computing their hours of work (which method was fair, reasonable, and well understood by the employees, and which method was identical with that followed for many years by substantially all other plants in this section of the country) estops the plaintiffs from asserting that some other method of computing time should have been employed.

4. The Court further concludes that such activities as are described at page 25 of the Master's report as "preliminary work" do not constitute a part of the employees' hours of work within the meaning of the Fair Labor Standards Act.

5. The Fair Labor Standards Act should be construed so as to facilitate the achievement of its fundamental purposes (shortening working hours and spreading employment); it should be construed in such a way as to permit compliance therewith in a practical manner; it should not be construed so as to encourage conspiracy, dishonesty, or entrapment.

6. In construing the meaning of the phrase "hours worked," in an action under the Fair Labor Standards Act, the Court must rely on custom, agreement, and established usage.

7. "Hours worked" include only such time as the employee is actually engaged in the performance of some service in furtherance of the interests of his employer, or is required by the employer to hold himself in readiness for work at an assigned work place, under circumstances in which the employee's time is not his own.

8. To justify any recovery in an action under the Fair Labor Standards Act, plaintiffs must prove with reason-

able certainty the amount of time each of them worked each week. No judgment may be predicated on an estimate as to the average amount of extra time worked; nor may damages be based on conjecture, guess, or speculation.

9. Employees have a right to agree that their hours of work should be computed on a basis which permits them to actually work a full forty hours per week at straight time.

10. The only appropriate methods of computing overtime compensation for plaintiffs in accordance with the statutory formula are (1) payment for overtime at once and one-half their guaranteed regular rate of 30 cents per hour, or (2) payment at once and one-half the regular piece rates for such number of pieces as may be produced during overtime hours.

11. To have recovered, plaintiffs would have had to prove not only that they worked overtime, but that the employer suffered or permitted it, and there is no proof of this.

12. Extra compensation voluntarily paid plaintiffs by their employer in addition to their regular earnings, and without any agreement that such extra compensation would be paid, may be off-set against claims of extra compensation for overtime.

13. The institution and prosecution of this suit was not conducted in good faith and, on the contrary, constituted an abuse of the Court's process.

14. Plaintiff Union was not properly authorized by its members to prosecute this action on behalf of any employees.

15. The claims of plaintiffs for all periods prior to November, 1939, were barred by an accord and satisfaction.

16. The allegations of the complaint do not properly set forth the facts required to establish the jurisdiction of the Court.

Albert E. Meder,
Frank E. Cooper,
11th Floor, Ford Building,
Detroit, Michigan.
Bert V. Nunneley,
Mt. Clemens, Michigan,
Attorneys for Defendant,
Mt. Clemens Pottery Company.

Beaumont, Smith & Harris,
Of Counsel.

Dated: Sept. 2, 1943.

NOTICE OF SETTLEMENT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND PRAECIPE

(Filed Sept. 3, 1943)

Now comes The Mt. Clemens Pottery Company, defendant in the above entitled cause, by its attorneys, and notices said cause for hearing on settlement of findings of fact and conclusions of law. Defendant submits herewith proposed findings of fact and conclusions of law, drafted at the Court's suggestion, as being in conformity with the Court's opinion herein; reserving, however, its right to take exception to such findings, or any part thereof.

Albert E. Meder,
Bert V. Nunneley,
Frank E. Cooper,
Attorneys for Defendant,

1100 Ford Building,
Detroit, Michigan.

Beaumont, Smith & Harris,
Of Counsel.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having been submitted to the Court for its consideration and decision upon the objections of plaintiffs to the report of the Special Master, and upon the motion of the defendant to enter judgment in favor of the defendant on the Master's report, and the Court having duly considered the same and being fully advised in the premises, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The report of the Special Master is hereby confirmed and the findings of fact contained in his report are adopted as the findings of Court, except as hereinafter specified.

2. The Court finds that some of the plaintiffs started work before the regular starting time at the beginning of the work day and at the resumption of work after the lunch period. Plaintiffs are not entitled to pay from the minute they punched the time clock; but in computing their hours of work there should be allowed 5 minutes for punching the clock plus an additional 2 minutes to go from the clock to their place of employment, or a total of 7 minutes, before the beginning of work in the morning. There should be allowed a total of 5 minutes at the resumption of work after the lunch period.

3. In computing the hours of work of plaintiffs as employees of defendant Mt. Clemens Pottery Company there

should be included in addition to the hours of work as computed by the Company the following:

(a) In cases where an employee punched his time clock card more than 7 minutes before the regular starting time at the beginning of a shift, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded 7 minutes before the regular starting time.

(b) In cases where an employee punched his time clock card more than 5 minutes before his regular starting time after his lunch period, there shall be computed as part of his hours of work the number of minutes by which the punch-in-time shown on his time card preceded 5 minutes before the regular starting time.

CONCLUSION OF LAW

1. The conclusions of the Special Master, as contained in his report, are hereby confirmed and adopted as the conclusions of the Court, except as hereinafter specified.

2. Plaintiffs have established that work was done by some of them which the Company did not give them credit for, and the computation thereof, on the basis above stated, forms a basis for recovery of overtime pay.

.....

District Judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed Sept. 13, 1943)

This cause having been submitted to the Court for its consideration and decision upon the objections of plaintiffs to the report of the Special Master, and upon the motion of the defendant to enter judgment in favor of the defendant on the Master's report, and the Court having duly considered the same and being fully advised in the premises, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The report of the Special Master is hereby confirmed and the findings of fact contained in his report are adopted as the findings of Court, except as hereinafter specified.

2. The Court finds that some of the plaintiffs started work before the regular starting time at the beginning of the work day and at the resumption of work after the lunch period. Plaintiffs are not entitled to pay from the minute they punched the time clock; but in computing their hours of work there should be allowed 5 minutes for punching the clock plus an additional 2 minutes to go from the clock to their place of employment, or a total of 7 minutes, before the beginning of work in the morning. There should be allowed a total of 5 minutes at the resumption of work after the lunch period.

3. In computing the hours of work of plaintiffs as employees of defendant Mt. Clemens Pottery Company there

should be included in addition to the hours of work as computed by the company the following:

(a) In cases where an employee punched his time clock card more than 7 minutes before his regular starting time at the beginning of a shift, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded 7 minutes before the regular starting time.

(b) In cases where an employee punched his time clock card more than 5 minutes before his regular starting time after his lunch period, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded 5 minutes before the regular starting time.

CONCLUSIONS OF LAW

1. The conclusions of the Special Master, as contained in his report, are hereby confirmed and adopted as the conclusions of the Court, except as hereinafter specified.

2. Plaintiffs have established that work was done by some of them which the Company did not give them credit for, and the computation thereof, on the basis above stated, forms a basis for recovery of overtime pay.

3. Defendants shall prepare an account of the amounts, if any, due to each of the plaintiffs and persons who have heretofore filed designations in accordance with the foregoing findings of fact and conclusions of law, and submit the same to this Court within thirty days from date hereof.

4. The Court having reserved for future argument and ruling the question of whether extra compensation, if any,

paid claimants should be offset against amounts, if any, which might be found due them under the foregoing findings of fact and conclusions of law, said account shall also show the amount of extra compensation, if any, paid each of the claimants during the period covered thereby.

Frank A. Picard,
District Judge.

PRELIMINARY STATEMENT OF EXCEPTIONS BY DEFENDANT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed Sept. 22, 1943)

Now comes the defendant in the above entitled cause, by its attorneys, and files the following preliminary statement of exceptions to the findings of fact and conclusions of law adopted by the Court herein on September 13, 1943. Because of the pendency of this defendant's prior motion requesting the Court to make various findings of fact and conclusions of law, in part supplemental to and in part inconsistent with those adopted by the Court, and because the Court has not yet passed on certain questions pending before it in said cause, it is impossible at this time to make a complete or final statement of exceptions. At this time, therefore, defendant excepts to said findings and conclusions, to the extent that the same are inconsistent with the report of the Special Master, on the following grounds:

Findings numbered "2" and "3" are not supported by any substantial evidence; and said findings are contrary to the clear and overwhelming weight and preponderance of the evidence; and are inconsistent with undisputed evi-

dence. Under the Court rules in such case made and provided, it was error for the Court to reverse the findings of the Master, no clear error having been shown in the Master's findings and conclusions, and his findings of fact not having been shown to be clearly erroneous. Conclusions numbered "2" and "3" adopted by the Court are contrary to law and to the evidence. The said above mentioned findings and conclusions rest on mere surmise, speculation, and conjecture; there has been no proof of any violation of the Fair Labor Standards Act, and no proof of any damages suffered by the plaintiffs, or any of them, and no proof of the amount of overtime, if any, worked by any of the plaintiffs. The conclusion that defendant shall prepare an account of the amounts, if any, due to each of the plaintiffs, is contrary to law and the just rights of the defendant, said cause not being an action for an accounting but a suit for damages wherein it is incumbent on plaintiffs to prove what damages, if any, they have sustained; and, in any event, such computation should not be required until the Court has passed on other pending issues, decision of which may eliminate the need for preparing any such account. Defendant hereby serves notice that a further and more definite and complete statement of exceptions will be filed in due course, after the decision by the Court on various issues, and questions which remain open and undecided at this time.

Albert E. Meder,
Frank E. Cooper,
11th Floor, Ford Building,
Detroit, Michigan;
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.,
Mt. Clemens, Michigan,
Attorneys for Defendant.

Beaumont, Smith & Harris,
Of Counsel.
September 22, 1943.

COMPUTATIONS MADE IN ACCORDANCE WITH COURT'S FINDINGS OF SEPTEMBER 13

(Filed Dec. 11, 1943)

In compliance with the findings of the Court filed in this cause on September 13, 1943, the defendant, at all times denying that there is any amount whatsoever due to any of the plaintiffs or designated parties, submits herewith a computation made in accordance with the Court's formula, which said formula the defendant at all times claims is not in accordance with the facts and law.

Albert E. Meder,
Frank E. Cooper,
11th Floor, Ford Bldg.,
Detroit, Michigan;
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.,
Mt. Clemens, Michigan,
Attorneys for Defendant.
Beaumont, Smith & Harris,
Of Counsel.

Dated at
Detroit, Michigan,
December 11, 1943.

Name of Employee	Extra Compensation figured as required by Court's opinion	Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime
Ahlers, Dorothy	$ .60	$ 15.02
Alband, William	None	99.02
Albert, Elsie—No Record of Employment		
Almstadt, Norman	4.94	138.92
Anderson, Steve	8.39	141.26
Apfel, Helen	2.63	25.64
Baade, Stella	7.11	55.38
Barg, Raymond	12.61	128.37
Batkins, Merle	.07	121.47
Baxter, Arthur	8.73	140.14
Beach, Beatrice	2.21	1.38
Behnke, Bill—Employed after April, 1941		
Bell, Violet	4.94	22.05
Bingle, Sherman	.09	119.01
Blumeister, Howard	10.29	140.61
Bobcean, Melvin	.35	—
Boeling, Barbara	2.67	7.15
Bohorski, Elinor	None	67.81
Boseak, Helen	.20	10.09
Bousson, Julia	.23	45.03
Boyer, Gertrude	.47	—
Brandt, Walter	3.91	115.28
Brede, Bernice	None	—
Brede, Evelyn	None	—
Browne, James	.60	—
Bruder, Molly	2.46	25.35
Bruder, Ruth	3.67	9.83
Brusseau, Joyce	.04	46.84
Burgess, Clarence	8.67	128.65
Burtle, Eileen	5.44	51.00
Campau, Alfred	None	98.98
Campau, Elizabeth	5.16	3.51

Name of Employee	Extra Compensation figured as required by Court's opinion	Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime
Campau, Frank	9.44	118.55
Campbell, Margaret	7.99	58.57
Chaltron, Harold	5.74	116.79
Ciscke, Walter	10.16	136.10
Collin, Louis	7.22	27.67
Clay, Wells	.01	106.56
Collins, Shirley	None	1.22
Conners, Emerson	8.57	72.22
Contri, Ella	None	10.15
Copeland, Curtis	12.83	135.75
Copeland, Ethel	.92	71.26
Cottrell, Claude	None	127.74
Cowhy, Mary	.48	—
Crewe, Susie	8.05	56.35
Crombez, Evelyn	5.88	20.88
Cronk, Louise	2.34	7.20
Cross, Gertrude	2.13	60.22
Cumeralto, Martha	7.60	56.92
Dacko, Nick	4.18	15.80
Daigneult, Arthur	.39	104.70
Daniels, Helen	.17	72.79
Daniels, Robert	None	105.43
DeBusschere, Leona	3.90	9.91
DeKiere, Lia	3.78	8.29
DeKiere, Margaret	3.06	5.08
DeScheppers, Leo	6.15	114.94
Denisnik, Olga	4.23	14.04
Dill, Glenn	8.16	83.22
Dubay, Clair	4.24	73.99
Dupont, Marcel	14.62	138.97
Eckert, Arthur	.58	88.78
Ehrke, George	16.29	100.37
Elgert, Elsie	10.17	21.70
Engelbrecht, Marjory	6.26	53.71

Name of Employee	Extra Compensation figured as required by Court's opinion	Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime
Erz, Mary—Employed after April, 1941		
Eschenburg, Edna	—	—
Felong, John	13.15	142.54
Fetty, Marion	10.28	27.62
Fobbe, Pauline	3.57	30.77
Fox, Shirley	2.63	1.32
Frazho, Paul	None	118.93
Freddle, Eva	7.09	51.37
Gaffke, Dorothy	1.18	51.10
Garcia, Pat	.34	5.61
Glefke, Elmer	6.42	141.28
Glawe, Ernest	9.39	140.33
Godin, Francis	.40	78.83
Gohl, Hilda	2.89	31.22
Goldenbogen, Agnes	8.37	69.06
Goldenbogen, Lavina	.66	72.81
Goldenbogen, Marvin	None	92.54
Gombert, Robert	.83	98.57
Gooley, Ruth	None	8.05
Gottschalk, Ruth	8.33	20.38
Graham, Elsie	6.75	54.88
Green, Robert	.32	—
Gunn, Norman—Employed after April, 1941		
Gutt, Helen	2.94	27.54
Hampton, Thelma	None	41.65
Harms, Emma	15.45	57.12
Harms, Gladys	1.16	—
Harms, Viola	1.59	3.05
Hasse, Floyd	35.93	114.82
Haus, Helen	1.72	—
Hay, Olive	2.59	55.33
Heisner, Andrew	13.21	127.87
Herpel, Dorothy	None	10.26
Hicks, Elvira	1.81	53.05

Name of Employee	Extra Compensation figured as required by Court's opinion	Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime
Hicks, Robert	2.82	3.06
Hildinger, Bertha	3.69	41.03
Hildinger, Evelyn	7.49	66.57
Holmes, Stanley—Employed after April, 1941		
Hotchkiss, Gerald	5.80	112.53
Houthoofd, George	4.70	70.92
Houthoofd, Jerome	4.40	29.63
Howcroft, Samuel	.86	23.55
Hurtienna, Esther	12.42	56.86
Jackman, Louise	1.90	62.39
Jackson, Loraine	9.28	23.52
Jackson, Robert	1.65	24.81
Jackson, Ruth	4.61	43.55
Jakubiak, Wanda	2.28	10.71
Jankowski, Kurt	7.32	72.69
Jorgenson, Kenneth	None	—
Jurek, Stella	3.35	10.79
Kaiser, Paul	11.35	85.40
Kandt, David	1.51	8.05
Kandt, Marion	None	9.50
Kanekowski, Marie	9.65	68.03
Kauten, Henry	None	111.13
Kempff, Dorothy	1.57	2.84
Kendall, Dorothy	.45	71.45
Kenney, Edith	9.24	68.47
Kethe, Norma	3.96	20.43
Kleinhans, Florence	3.73	19.70
Kotzke, LaVerne	1.94	4.60
Kogleman, Sam	.15	59.26
Krause, Ruth	.34	59.18
Krohn, Virginia	2.57	9.10
Kudla, Antoinette	8.60	60.58
Kudla, Julia	6.64	55.29
Kukuk, Martin	13.44	144.27

Name of Employee	Extra Compensation figured as required by Court's opinion	Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime
Kukuk, Otto	7.15	138.06
Kulman, Kathrine	1.34	—
Kuzdzal, Helen	2.17	4.12
LaForest, Ethel	4.23	8.09
Larimer, Earl	.13	119.78
Leenkneght, Marie	3.60	61.12
Lehl, Adam	6.06	118.86
Liebzeit, Clarence	.28	118.38
Leibzeit, George	2.67	5.92
Lengyl, Agnes	None	63.55
Logghe, Margaret	None	2.93
Lozen, Harry	8.97	96.86
Lozen, Martha	.25	—
Luchtman, Nelson	10.37	146.81
Ludeman, Louis	32.84	124.47
Lulay, Virginia	None	62.42
MacLeod, Virginia	Employed after April, 1941	
Madus, Florence	None	5.90
Mallast, Jennie	8.67	66.58
Manchik, Agnes	2.71	5.66
Marleau, Elizabeth	9.22	71.51
Masters, Clayton	.24	82.28
Masters, Earl	1.26	98.28
May, Catherine	10.47	56.77
May, Dorothy	3.33	61.97
May, Harry	None	79.63
Mayabb, Anna	6.88	58.17
Mayabb, Twila	2.18	3.75
McVicar, Donald	9.57	23.13
Meitz, Arthur	12.37	121.94
Metz, John	.24	126.60
Meyers, Viola	9.51	68.82
Miller, Esther	7.27	56.87
Miller, Florence	5.40	29.09

Name of Employee	Extra Compensation figured as required by Court's opinion	Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime
Miller, Irene	9.62	25.81
Miller, Lawrence	.92	107.03
Miller, Marie	.34	61.50
Miller, Theodore	1.75	122.59
Mohanyk, Aleck—Employed after April, 1941		
Neal, Olga	4.69	58.09
Neoker, Irene	7.73	55.69
Nicka, Carl	3.25	81.79
Nicks, Edna	3.38	25.79
Noe, Esther	.13	43.44
Nofzinger, Walter	9.13	121.17
Olewnicki, Genevieve	3.20	2.71
Olewnicki, Janet	3.80	3.72
Osborne, James	None	113.90
Osterman, Katherine	1.96	22.09
Paliniewicz, Alfred	1.43	1.53
Parrott, Ruth	None	48.09
Pearl, Floyd	8.93	140.38
Pearl, Fred	11.43	115.21
Pearl, Harold	4.49	114.95
Pearl, Marie	1.72	3.70
Persinger, Helen	None	39.06
Persinger, Thomas	4.42	72.79
Peters, Martha	2.68	1.19
Petrucci, Anthony	1.51	70.87
Phillips, Delbert	None	112.23
Phillips, Mary	.89	—
Pierzina, Eva	8.35	59.76
Pretzer, Arthur	5.99	117.21
Pretzer, Lucille	10.97	57.77
Rachow, John	12.75	97.97
Rauschelbach, Adelia	7.96	56.56
Redlawski, Helen	5.41	59.19
Redlawski, Wilma	7.32	34.41

Name of Employee	Extra Compensation figured as required by Court's opinion	Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime
Reeder, Stanley	None	67.54
Reeder, Wesley	8.02	101.14
Rettig, Ann	5.23	10.13
Richards, Elaine	.21	—
Ritter, John	.98	8.71
Rohrbeck, Luella	5.62	56.82
Rondo, Ruth	.03	8.05
Rozanski, Mary	.06	—
Sabatini, Rita	.06	57.29
Sahr, Emma	.60	59.08
Sahrow, Elmer	13.76	119.03
Sawicki, Mary	9.64	35.58
Schalm, John	3.27	2.63
Schalm, Mikel	2.32	127.31
Scheible, Edna	1.66	2.14
Scheible, Mary	6.46	27.09
Schippocasse, Albert	.26	131.87
Schleussler, Marion	2.04	54.73
Schoof, Carl	.02	117.45
Schramm, Beatrice	.03	18.59
Schroeder, George	18.76	144.78
Schroeder, Leona	6.50	57.33
Schroeder, Shirley	6.20	16.26
Schuetzler, Florence	.86	49.39
Schulte, Rita	7.41	55.84
Schuster, Josephine	8.80	23.14
Schwartz, Clarence	10.32	145.66
Selk, Walter	None	129.98
Shattuck, Russell	1.12	96.76
Sibbe, Arthur	15.33	142.04
Sievart, Carl	6.38	84.62
Siewart, Paul	13.70	130.89
Smith, Preston	6.45	116.01
Snyder, Eileen	4.63	4.83

Name of Employee	Extra Compensation figured as required by Court's opinion	Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime
Socia, Lillian	6.81	56.02
Sonntag, Esther	.92	
Sopha, Bernhardt	None	73.82
Sopha, Eric	None	130.20
Sopha, Esther	.60	23.49
Spicer, Verlon	None	31.59
Stafford, Glen	7.04	121.69
Stafford, Leo	8.72	89.55
Stanke, Alma	None	48.71
Stark, B.	.11	95.66
Starkey, Ilene	.15	50.53
Starkey, Paul	3.75	92.05
Stoll, Alice	.89	4.68
Strong, Dorothy	3.86	4.94
Suer, Edwin	4.65	65.38
Sutton, Frank	.54	75.15
Tebo, Chesley	10.98	104.80
Teise, Elsie	.01	15.71
Tesner, Tom	1.68	123.77
Tewksbury, Jean	None	18.19
Thoel, Louis	6.74	138.83
Thoel, Walter	.98	106.29
Thomas, Albert	1.40	9.47
Thomas, Aletha	.26	48.38
Thurman, Louis	8.45	139.83
Thurman, Viola	3.59	67.02
Tupschov, Elizabeth	9.86	33.66
Trombley, Earl	3.27	79.47
Trombley, Ray	12.54	73.34
Ulhrich, Eleanora	7.00	19.65
Ulman, Emerson	None	85.03
Van Rosenberg, Mable	None	24.43
Vertin, Kathryn	.26	27.22
Watkins, Albert	.87	121.90

Name of Employee	Extra Compensation figured as required by Court's opinion	Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime
Watkins, Frances	1.66	1.56
Weier, Artilla	4.04	61.48
Weier, Delia	.05	23.58
Weier, Edwin	.33	118.49
Weier, Wilbert	1.51	109.54
Weiner, Dorothy	3.75	58.52
Weiner, John	4.61	99.98
Wendt, William	5.50	124.97
Wilder, Robert	.76	11.33
Willey, Ray	.18	112.35
Williams, Margaret	.20	70.09
Wilson, Huela—No Record of Employment		
Yochum, Margaret	5.12	56.87
Young, Burnetta—No Record of Employment		
Zavaruka, Tinnie	2.31	50.81
Zieman, Lorraine	1.14	—
Zieman, Margaret	1.28	—
Zienert, Mildred	6.60	18.53
Zychski, Leona	1.91	7.97
Total	$1,207.87	$16,640.19

PRAECIPE

(Filed Dec. 11, 1943)

To the Clerk of said Court:

You will please notice for hearing at 2:00 P. M., Monday, December 20, 1943, or as soon thereafter as counsel may be heard, before the Honorable Frank A. Picard, District Judge, defendant's motion of September 2 requesting the adoption of findings of fact and conclusions of law. The said motion was hitherto noticed for hearing on September 13, and on that day the Court adjourned the hearing sine die pending the completion of certain computations which the Court directed the defendant to make. The defendant having completed and filed with the Court such computations (but always preserving its objection to the formula therein embodied and to the requirement that such computations be made by it) said motion should now be heard. The day and hour above-mentioned were set by Honorable Frank A. Picard, District Judge, and this notice is being filed pursuant to his suggestion and instructions.

Albert E. Meder,
Frank E. Cooper,
11th Floor, Ford Building,
Detroit, Michigan.
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.
Mt. Clemens, Michigan,
Attorneys for Defendant.
Beaumont, Smith & Harris,
Of Counsel.

Dated at Detroit, Michigan,
December 11, 1943.

OPINION OF THE COURT

(Filed Mar. 3, 1944)

The Special Master appointed by the Court herein filed his report on June 5, 1943. On June 30, 1943 this Court filed an opinion covering certain aspects raised in the issues. Certain findings of fact and conclusions of law were submitted. The Court ordered an accounting to be filed upon the basis of a formula determined upon as a result of the evidence adduced at the trial indicating the extent of the working time of the plaintiff employees. This accounting was submitted by defendant company on January 4, 1944, and plaintiff employees immediately objected to the method of computation utilized by the company. Extensive briefs have been filed, and counsel have orally argued the questions raised.

FINDINGS OF FACT

Counsel for both plaintiffs and defendant have asked for supplemental or additional findings of fact and conclusions of law, and the Court will, in the interest of clarifying the record and determining the issues, attempt to outline its position on the matters discussed.

Because of the extensive requests for additional findings of fact and conclusions of law, the Court has deemed it desirable to re-examine the lengthy testimony. The respective motions of plaintiffs and defendant for additional findings of fact and conclusions of law are hereby

overruled, with exceptions saved, and the Court adopts the following additional and supplemental findings of facts and conclusions of law.

1. Plaintiff employees contended in effect that they were required to report for work approximately fourteen minutes before the hour in the morning and that they immediately started productive work and were paid only from the subsequent quarter hour. The employees further contended that this process of requiring them to work for fourteen minutes after the hour was repeated at lunch recess, without payment except from the hour. After reviewing the record of the evidence adduced, the Court is convinced that plaintiff employees were in fact required by the foremen of the defendant as we stated in our earlier opinion that

> "when they (foremen) told them (employees) that work would start at 6:45 o'clock, they likewise mentioned the hour of 6:31; or if 7:00 A. M. was the starting time, then 6:46 was also designated in some manner. With this picture before us we cannot help but believe that there was a method in this formula beyond that expressed by defendant's witnesses."

2. This Court found specifically that defendant company through its foremen had sought to circumvent the Fair Labor Standards Act, but we also held that from the evidence, the company should be allowed seven minutes before the starting hour as time spent by employees in checking through time clocks and in going to their places of employment during the day. This Court thus attempted to visualize the realities of the situation and required defendant to compensate employees for all minutes shown on the time cards over seven before the starting hour in the morning and over five minutes before the hour set for beginning of the afternoon work.

3. Defendant company made computations of time worked by plaintiffs in a manner which they represent to be in accordance with directions of this Court. The breakdown of these computations has not been filed, and the Court is unable, from the conclusions set forth, to determine that each employee has been offered complete restitution. The defendant will be required to file with the Clerk of this Court, within thirty days hereafter, such supporting data as to enable the Court to determine the accuracy of said accounting.

The computation submitted does show two items, however. In one column there is an amount of extra compensation for overtime claimed by each employee, and in the next column there is set forth what purports to be extra compensation voluntarily paid such person during the same period, in excess of the agreed wages and overtime. The defendant claims that the amounts set forth in the second column, whether they be called bonuses, gifts, gratuities or extra compensation, can now be deducted by it from the amounts set forth in the first column, in determining the amount of the judgment to be entered in favor of each individual.

According to defendant's account, a computation has been made for approximately 289 persons who are named plaintiffs or who have duly intervened herein. Under this computation, 45 employees have no claim for overtime; 59 have claims for less than $1.00; 85 have claims between $1.00 and $5.00; 71 have claims between $5.00 and $10.00; 23 have claims between $10.00 and $15.00; 4 have claims between $15.00 and $20.00 and 2 have claims between $30.00 and $35.00. The company states in such accounting that

> "extra compensation voluntarily paid these 289 individuals during the same period as covered by the computation, and in excess of their agreed wages and overtime was $16,640.19."

The question presented to us is "should this bonus or extra compensation be deducted from the wages admittedly owing for overtime be deducted from the amount of the judgment rendered plaintiff employees herein?" This Court thinks not, and from the evidence, finds that such deductions are not permissible under the circumstances of this case.

CONCLUSIONS OF LAW

4. Defendant company places much emphasis upon the decision of my colleague, Hon. Arthur F. Lederle, in the case of Corey v. Detroit Steel Corporation, number 3704 on the docket of this court, decided July 31, 1943. In that case the Court stated that

> "A payment made to an employee by an employer may be compensation for services, even though made voluntarily and without legal obligation, and where it appears from consideration of all the surrounding facts and circumstances that a bonus was not a gift of the employer to the employee, the same should be considered as compensation for services" citing Bass v. Hawley, 62 Fed. (2nd) 721, Willkie v. Commissioner, 127 Fed. (2nd) 953, Thomas v. Commissioner, 135 Fed. (2nd) 378.

The instant case appears easily distinguishable from Corey v. Detroit Steel Corporation, supra. The evidence clearly indicates that defendant at bar gave this bonus or gratuity voluntarily, without compulsion, and certainly under no duress or mistake. In every sense the company intended that its plan, which is called upon occasion the "51-52-53 plan," should furnish employees a gift equal to or in lieu of a vacation. The president of defendant

company stated that no agreement existed between the company and the employees relative to the granting of the bonus, and it is obvious that it was merely a unilateral arrangement worked out by the company to furnish a gratuity to the employees. It must be conceded that the employees could not enforce such a claim in the courts.

5. Under all the facts and circumstances herein it appears clear that this is a gratuity, and it seems that since it was intended as a gift that it would ill become this Court to permit the employer, years later, to treat the same as a part of weekly or annual compensation when faced with the claim of employees for lawful wages accruing under an Act of Congress. To treat it otherwise in this case would savor too largely of Indian giving, and this Court would not be a party to such a strained interpretation. Judgment must be afforded to plaintiffs and each of them for the amount of overtime worked each week under the formula heretofore drafted by this Court. As already indicated, liquidated damages will be allowed plaintiffs in an amount equal to such sum.

6. The Court may, under the Fair Labor Standards Act, require defendant to pay reasonable attorney fees to plaintiffs' counsel.

This litigation has intermittently covered almost three years. Pleadings have been examined and argued, and all counsel have attempted to adequately assist the Court in arriving at fair and accurate conclusions. Many actual days of trial work have been involved, and undoubtedly an unusual amount of time has been expended by all counsel in this exhaustive litigation. A petition for allowance has been filed herein, and the Court appreciates that a reasonable attorney fee for the work performed by plaintiffs' counsel might well, upon a basis usually applied by competent counsel, amount to a sizable amount. This Court

is conscious of the fact, however, that plaintiffs have fallen down completely on at least 75 percent of the claims made in their bill of complaint and statements in court. Before the Master plaintiff failed 100 percent. It is conceivable that had plaintiffs made reasonable claims at the start defendant might have made some offer of compromise although defendant's attitude has not encouraged such a conclusion by this Court. But reasonable claims would have simplified the issue and cut the time consumed to a minimum. If this case has taken as long as it has it is in great part due to plaintiffs, though not entirely. On the other hand it is—in this Court's opinion—chiefly defendant's errors that forced plaintiffs to court in the first place. These facts the Court must consider in setting fees.

It cannot now be said whether an appeal will be filed in this action by either party, although this Court would welcome clarification of issues determined herein by the Circuit Court of Appeals for the Sixth Circuit. Yet, if additional work is required, then the matter of additional fees can be fixed by the Circuit Court of Appeals, at the time of appeal, or the case can be sent back to this Court for further determination. Under all the circumstances, it seems to this Court that counsel for plaintiffs are entitled to an award of attorney fees for work up to the date of the filing of this opinion in an amount of $2,000.00.

7. The Special Master has already been awarded the sum of $2,000.00 as compensation for hearing the issues herein, and this Court orders judgment for said amount to be rendered against the defendant for said sum. Costs are taxed in plaintiffs' favor.

(sgd.) Frank A. Picard,
United States District Judge.

Dated: March 3rd, 1944.

MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AS DETERMINED BY THE COURT IN ITS OPINION OF MARCH 3, 1944

(Filed May 24, 1944)

Now come the plaintiffs, by their counsel, and move the Court to amend its findings of fact and conclusions of law as set forth in its opinion of March 3, 1944, by amending the same in the following respects, to-wit:

(1) In Item 2 of findings of fact, the Court stated as follows:

> "This Court thus attempted to visualize the realities of the situation, and required defendant to compensate employees for all minutes shown on the time cards over seven before the starting hour in the morning and over five minutes before the hour set for beginning of the afternoon work."

Movents ask that said opinion be altered and amended to read as follows:

> "This Court finds from the evidence that all of said plaintiff employees were upon the premises of the defendant at defendant's request and under defendant's control and direction during the times set forth upon the time card records kept by the company, and that during the periods as set forth upon said time card records, said employees were engaged in a process and occupation necessary to production. That the travel time expended by the employees was not primarily undertaken for the convenience of the employees, but said time was spent rather for the benefit of defendant and the defendant's manufacturing operations; that the

time spent by plaintiff employees upon defendant's premise and under defendant's direction and control, as shown by defendant's time card records, is determined by this Court to be productive employment within the meaning of the Fair Labor Standards Act, for which defendant must compensate plaintiff employees."

(2) By adding to the conclusions of law the following statement:

"The work week or time worked by plaintiff employees is therefore determined to be the time spent by said employees in productive activities upon defendant's premises, at defendant's request and under defendant's direction and control. For such purposes the time spent by said employees in traveling directly from the time clocks to their machines or places of direct physical activity is determined to be compensable time, said employees are engaged in a process and occupation necessary to actual production. There is 'a fossorial activity bearing all the indicia of labor, and the determination of the place of employment is definitely a matter of determination by the defendant.'"

Edward Lamb,
Attorney for Plaintiffs.

1014 Edison Building.
Toledo 4, Ohio.

OBJECTIONS TO ALLOWANCE OF ATTORNEY FEES

(Filed June 12, 1944)

Now comes the Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by Beaumont, Smith & Harris and Bert V. Nunneley, its attorneys and objects to the allowance of $2,000 as attorney fees heretofore made in favor of Edward Lamb, attorney for the plaintiffs.

For the following reasons:

1. Such allowance is excessive in view of the amount of recovery made by the plaintiffs.

2. That while considerable time was spent on the trial of said cause, most of such time concerned claims on the part of the plaintiffs which were disallowed.

3. That a great deal of time in connection with the trial of said cause was expended in the contest of claims made by the plaintiffs which were excessive in amount.

4. That a great deal of time spent in the trial of said cause was on the hearing of claims which were utterly without foundation in fact and were in truth abandoned by the plaintiffs in the course of the trial.

5. That said allowance was made without any testimony to support it and without a hearing on the petition for same.

6. That said allowance was made to Edward Lamb whereas in fact no judgment can be rendered in this case in favor of said Lamb for the reason that he is not a party to the cause.

Beaumont, Smith & Harris
F. E. Cooper,
11th Floor, Ford Building,
Detroit 26, Michigan.
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.
Mt. Clemens, Michigan.
Attorneys for the Defendant,
Mt. Clemens Pottery Company.

June 10, 1944.

JUDGMENT

(Filed June 13, 1944)

At a session of said Court held in the Federal Building in the City of Detroit, Eastern District of Michigan, this 13th day of June, 1944.

Present: Hon. Frank A. Picard, District Judge.

The above entitled cause having come on to be heard and the same having been referred to Donald L. Quaife, Esq., as Special Master, to hear proofs and render a report to the Court, and exceptions to the report of the Master having been filed by plaintiffs, and the same having been considered by the Court, and the Court being fully advised in the premises, It Is Hereby Ordered, Adjudged And Decreed As Follows:

1. The plaintiffs and parties filing designations as listed in the attached schedule which is hereby incorporated herein and made a part hereof, shall each recover of said defendant Mt. Clemens Pottery Company the sum set opposite his or her name as overtime compensation, plus an additional equal amount representing liquidated damages, as provided in Section 16 (b) of the Fair Labor Standards Act, Public Act No. 718, 75th Congress, 3rd Session.

2. Said employees are hereby given judgment for all unpaid time over seven minutes before the starting hour in the morning, and over five minutes before the hour set for beginning of the afternoon work. No deduction therefrom shall be made by the defendant for bonuses or so-called extra compensation which the Court herein discussed in its opinion of March 3, 1944, and found to be gratuities, gifts and extra compensation voluntarily paid by defendant to the plaintiff employees. Upon such determination of the time worked by said employees, the de-

fendant shall pay said employees for all hours in which they were so employed at the rate of time and one-half times their regular rate for the time spent in excess of the prescribed hours established by the Fair Labor Standards Act of 1938, and the defendant shall pay to said plaintiffs and other employees having duly filed their authorizations herein, an amount equal thereto as liquidated damages, as provided for in said Act.

3. It Is Further Ordered, Adjudged And Decreed that plaintiffs be and they hereby are allowed the sum of $2,000 as attorney fees as compensation for their attorneys up to and including the date hereof, said sum to be included in the costs which the plaintiffs are hereinafter authorized to tax.

4. It Is Further Ordered, Adjudged And Decreed that the Court having heretofore allowed Donald L. Quaife, Esq., the sum of $2,600 as compensation in full for his services as Special Master herein and the plaintiffs having paid $300 thereof and the defendant having paid $2,300 thereof, plaintiffs may tax the defendant as part of their costs in this cause the said sum of $300 so paid on the amount of the said Donald L. Quaife, Esq.

5. It Is Further Ordered, Adjudged And Decreed that plaintiffs be and they are hereby awarded costs including the attorney fees and Master's fee hereinbefore referred to, to be duly taxed.

To all of such findings, orders and judgments defendant excepts. To that part of the rulings, findings, orders and judgments denying the claim of plaintiffs that there should be counted as a part of the hours of work all the time spent on the defendant's premises as indicated by the time clock cards, plaintiffs all duly except.

A stay of forty days is hereby granted.

Frank A. Picard,
United States District Judge.

AMOUNTS OF JUDGMENT IN FAVOR OF INDIVIDUAL PLAINTIFFS AND PARTIES SIGNING DESIGNATIONS

Name	Amount Due as Overtime Compensation	Liquidated Damages	Total
Ahlers, Dorothy	$ 0.60	$ 0.60	$ 1.20
Almstadt, Norman	4.94	4.94	9.88
Anderson, Steve	8.39	8.39	16.78
Apfel, Helen	2.63	2.63	5.26
Baade, Stella	7.11	7.11	14.22
Barg, Raymond	12.61	12.61	25.22
Batkins, Merle	.07	.07	.14
Baxter, Arthur	8.73	8.73	17.46
Beach, Beatrice	2.21	2.21	4.42
Bell, Violet	4.94	4.94	9.88
Bingle, Sherman	.09	.09	.18
Blumeister, Howard	10.29	10.29	20.58
Bobcean, Melvin	.35	.35	.70
Boeling, Barbara	2.67	2.67	5.34
Boseak, Helen	.20	.20	.40
Bousson, Julia	.23	.23	.46
Boyer, Gertrude	.47	.47	.94
Brandt, Walter	3.91	3.91	7.82
Browne, James	.60	.60	1.20
Bruder, Molly	2.46	2.46	4.92
Bruder, Ruth	3.67	3.67	7.34
Brusseau, Joyce	.04	.04	.08
Burgess, Clarence	8.67	8.67	17.34
Burtle, Eileen	5.44	5.44	10.88
Campau, Elizabeth	5.16	5.16	10.32
Campau, Frank	9.44	9.44	18.88
Campbell, Margaret	7.99	7.99	15.98
Chaltron, Harold	5.74	5.74	11.48
Ciscke, Walter	10.16	10.16	20.32

Name	Amount Due as Overtime Compensation	Liquidated Damages	Total
Collin, Louis	7.22	7.22	14.44
Clay, Wells	.01	.01	.02
Conners, Emerson	8.57	8.57	17.14
Copeland, Curtis	12.83	12.83	25.66
Copeland, Ethel	.92	.92	1.84
Cowhy, Mary	.48	.48	.96
Crewe, Susie	8.05	8.05	16.10
Crombez, Evelyn	5.88	5.88	11.76
Cronk, Louise	2.34	2.34	4.68
Cross, Gertrude	2.13	2.13	4.26
Cumeralto, Martha	7.60	7.60	15.20
Dacko, Nick	4.18	4.18	8.36
Daigneult, Arthur	.39	.39	.78
Daniels, Helen	.17	.17	.34
DeBusschere, Leona	3.90	3.90	7.80
DeKiere, Lia	3.78	3.78	7.56
DeKiere, Margaret	3.06	3.06	6.12
DeScheppers, Leo	6.15	6.15	12.30
Denisuik, Olga	4.23	4.23	8.46
Dill, Glenn	8.16	8.16	16.32
Dubay, Clair	4.24	4.24	8.48
Dupont, Marcel	14.62	14.62	29.24
Eckert, Arthur	.58	.58	1.16
Ehrke, George	16.29	16.29	32.58
Elgert, Elsie	10.17	10.17	20.34
Engelbrecht, Marjory	6.26	6.26	12.52
Felong, John	13.15	13.15	26.30
Fetty, Marion	10.28	10.28	20.56
Fobbe, Pauline	3.57	3.57	7.14
Fox, Shirley	2.63	2.63	5.26
Freddle, Eva	7.09	7.09	14.18
Gaffke, Dorothy	1.18	1.18	2.36
Garcia, Pat	.34	.34	.68
Glefke, Elmer	6.42	6.42	12.84
Glawe, Ernest	9.39	9.39	18.78
Godin, Francis	.40	.40	.80

Name	Amount Due as Overtime Compensation	Liquidated Damages	Total
Gohl, Hilda	2.89	2.89	5.78
Goldenbogen, Agnes	8.37	8.37	16.74
Goldenbogen, Lavina	.66	.66	1.32
Gombert, Robert	.83	.83	1.66
Gottschalk, Ruth	8.33	8.33	16.66
Graham, Elsie	6.75	6.75	13.50
Green, Robert	.32	.32	.64
Gutt, Helen	2.94	2.94	5.88
Harms, Emma	15.45	15.45	30.90
Harms, Gladys	1.16	1.16	2.32
Harms, Viola	1.59	1.59	3.18
Hasse, Floyd	35.93	35.93	71.86
Haus, Helen	1.72	1.72	3.44
Hay, Olive	2.59	2.59	5.18
Heisner, Andrew	13.21	13.21	26.42
Hicks, Elvira	1.81	1.81	3.62
Hicks, Robert	2.82	2.82	5.64
Hildinger, Bertha	3.69	3.69	7.38
Hildinger, Evelyn	7.49	7.49	14.98
Hotchkiss, Gerald	5.80	5.80	11.60
Houthoofd, George	4.70	4.70	9.40
Houthoofd, Jerome	4.40	4.40	8.80
Howcroft, Samuel	.86	.86	1.72
Hurtienna, Esther	12.42	12.42	24.84
Jackman, Louise	1.90	1.90	3.80
Jackson, Loraine	9.28	9.28	18.56
Jackson, Robert	1.65	1.65	3.30
Jackson, Ruth	4.61	4.61	9.22
Jakubiak, Wanda	2.28	2.28	4.56
Jankowski, Kurt	7.32	7.32	14.64
Jurek, Stella	3.35	3.35	6.70
Kaiser, Paul	11.35	11.35	22.70
Kandt, David	1.51	1.51	3.02
Kanekowski, Marie	9.65	9.65	19.30
Kempff, Dorothy	1.57	1.57	3.14
Kendall, Dorothy	.45	.45	.90

Name	Amount Due as Overtime Compensation	Liquidated Damages	Total
Kenney, Edith	9.24	9.24	18.48
Kethe, Norma	3.96	3.96	7.92
Kleinhans, Florence	3.73	3.73	7.46
Kotzke, LaVerne	1.94	1.94	3.88
Kogelman, Sam	.15	.15	.30
Krause, Ruth	.34	.34	.68
Krohn, Virginia	2.57	2.57	5.14
Kudla, Antoinette	8.60	8.60	17.20
Kudla, Julia	6.64	6.64	13.28
Kukuk, Martin	13.44	13.44	26.88
Kukuk, Otto	7.15	7.15	14.30
Kulman, Kathrine	1.34	1.34	2.68
Kuzdzal, Helen	2.17	2.17	4.34
LaForest, Ethel	4.23	4.23	8.46
Larimer, Earl	.13	.13	.26
Leenkneght, Marie	3.60	3.60	7.20
Lehl, Adam	6.06	6.06	12.12
Leibzeit, Clarence	.28	.28	.56
Leibzeit, George	2.67	2.67	5.34
Lozen, Harry	8.97	8.97	17.94
Lozen, Martha	.25	.25	.50
Luchtman, Nelson	10.37	10.37	20.74
Ludeman, Louis	32.84	32.84	65.68
Mallast, Jennie	8.67	8.67	17.34
Manchik, Agnes	2.71	2.71	5.42
Marleau, Elizabeth	9.22	9.22	18.44
Masters, Clayton	.24	.24	.48
Masters, Earl	1.26	1.26	2.52
May, Catherine	10.47	10.47	20.94
May, Dorothy	3.33	3.33	6.66
Mayabb, Anna	6.88	6.88	13.76
Mayabb, Twila	2.18	2.18	4.36
McVicar, Donald	9.57	9.57	19.14
Meitz, Arthur	12.37	12.37	24.74
Metz, John	.24	.24	.48
Meyers, Viola	9.51	9.51	19.02

Name	Amount Due as Overtime Compensation	Liquidated Damages	Total
Miller, Esther	7.27	7.27	14.54
Miller, Florence	5.40	5.40	10.80
Miller, Irene	9.62	9.62	19.24
Miller, Lawrence	.92	.92	1.84
Miller, Marie	.34	.34	.68
Miller, Theodore	1.75	1.75	3.50
Neal, Olga	4.69	4.69	9.38
Neoker, Irene	7.73	7.73	15.46
Nicka, Carl	3.25	3.25	6.50
Nicks, Edna	3.38	3.38	6.76
Noe, Esther	.13	.13	.26
Nofzinger, Walter	9.13	9.13	18.26
Olewnicki, Genevieve	3.20	3.20	6.40
Olewnicki, Janet	3.80	3.80	7.60
Osterman, Katherine	1.96	1.96	3.92
Paliniewicz, Alfred	1.43	1.43	2.86
Pearl, Floyd	8.93	8.93	17.86
Pearl, Fred	11.43	11.43	22.86
Pearl, Harold	4.49	4.49	8.98
Pearl, Marie	1.72	1.72	3.44
Persinger, Thomas	4.42	4.42	8.84
Peters, Martha	2.68	2.68	5.36
Petrucci, Anthony	1.51	1.51	3.02
Phillips, Mary	.89	.89	1.78
Pierzina, Eva	8.35	8.35	16.70
Pretzer, Arthur	5.99	5.99	11.98
Pretzer, Lucille	10.97	10.97	21.94
Rachow, John	12.75	12.75	25.50
Rauschelbach, Adelia	7.96	7.96	15.92
Redlawski, Helen	5.41	5.41	10.82
Redlawski, Wilma	7.32	7.32	14.64
Reeder, Wesley	8.02	8.02	16.04
Rettig, Ann	5.23	5.23	10.46
Richards, Elaine	.21	.21	.42
Ritter, John	.98	.98	1.96
Rohrbeck, Luella	5.62	5.62	11.24

Name	Amount Due as Overtime Compensation	Liquidated Damages	Total
Rondo, Ruth	.03	.03	.06
Rożanski, Mary	.06	.06	.12
Sabatini, Rita	.06	.06	.12
Sahr, Emma	.60	.60	1.20
Sahrow, Elmer	13.76	13.76	27.52
Sawicki, Mary	9.64	9.64	19.28
Schalm, John	3.27	3.27	6.54
Schalm, Mikel	2.32	2.32	4.64
Scheible, Edna	1.66	1.66	3.32
Scheible, Mary	6.46	6.46	12.92
Schippocasse, Albert	.26	.26	.52
Schleussler, Marion	2.04	2.04	4.08
Schoof, Carl	.02	.02	.04
Schramm, Beatrice	.03	.03	.06
Schroeder, George	18.76	18.76	37.52
Schroeder, Leona	6.50	6.50	13.00
Schroeder, Shirley	6.20	6.20	12.40
Scheutzler, Florence	.86	.86	1.72
Schulte, Rita	7.41	7.41	14.82
Schuster, Josephine	8.80	8.80	17.60
Schwartz, Clarence	10.32	10.32	20.64
Shattuck, Russell	1.12	1.12	2.24
Sibbe, Arthur	15.33	15.33	30.66
Sievart, Carl	6.38	6.38	12.76
Siewart, Paul	13.70	13.70	27.40
Smith, Preston	6.45	6.45	12.90
Snyder, Eileen	4.63	4.63	9.26
Socia, Lillian	6.81	6.81	13.62
Sonntag, Esther	.92	.92	1.84
Sopha, Esther	.60	.60	1.20
Stafford, Glen	7.04	7.04	14.08
Stafford, Leo	8.72	8.72	17.44
Stark, B.	.11	.11	.22
Starkey, Ilene	.15	.15	.30
Starkey, Paul	3.75	3.75	7.50
Stoll, Alice	.89	.89	1.78

Name	Amount Due as Overtime Compensation	Liquidated Damages	Total
Strong, Dorothy	3.86	3.86	7.72
Suer, Edwin	4.65	4.65	9.30
Sutton, Frank	.54	.54	1.08
Tebo, Chesley	10.98	10.98	21.96
Teise, Elsie	.01	.01	.02
Tesner, Tom	1.68	1.68	3.36
Thoel, Louis	6.74	6.74	13.48
Thoel, Walter	.98	.98	1.96
Thomas, Albert	1.40	1.40	2.80
Thomas, Aletha	.26	.26	.52
Thurman, Louis	8.45	8.45	16.90
Thurman, Viola	3.59	3.59	7.18
Tupschov, Elizabeth	9.86	9.86	19.72
Trombley, Earl	3.27	3.27	6.54
Trombley, Ray	12.54	12.54	25.08
Ulrich, Eleanora	7.00	7.00	14.00
Vertin, Kathryn	.26	.26	.52
Watkins, Albert	.87	.87	1.74
Watkins, Francis	1.66	1.66	3.32
Weier, Artilla	4.04	4.04	8.08
Weier, Delia	.05	.05	.10
Weier, Edwin	.33	.33	.66
Weier, Wilbert	1.51	1.51	3.02
Weiner, Dorothy	3.75	3.75	7.50
Weiner, John	4.61	4.61	9.22
Wendt, William	5.50	5.50	11.00
Wilder, Robert	.76	.76	1.52
Willey, Ray	.18	.18	.36
Williams, Margaret	.20	.20	.40
Yochum, Margaret	5.12	5.12	10.24
Zavaruka, Tinnie	2.31	2.31	4.62
Zieman, Lorraine	1.14	1.14	2.28
Zieman, Margaret	1.28	1.28	2.56
Zienert, Mildred	6.60	6.60	13.20
Zychski, Leona	1.91	1.91	3.82
Total	$1,207.87	$1,207.87	$2,415.74

PETITION FOR FIXING OF BOND AND PROVIDING FOR STAY ON GIVING OF BOND

(Filed Aug. 29, 1944)

Comes now Mt. Clemens Pottery Company, defendant in the above entitled cause, by its attorneys, and shows unto this Honorable Court that it has instructed its attorneys to perfect, within the time limited by statute, an appeal to the Sixth Circuit Court of Appeals from the judgment entered herein on or about June 13, 1944, and that said appeal will be duly perfected within the time allowed therefor, and that the stay of proceedings hitherto granted herein expires on or about September 2, 1944, and that this defendant desires to have a stay of proceedings pending the determination of this cause on appeal, and hereby petitions this Honorable Court for an order fixing the amount of security which this defendant should give and furnish upon said appeal, and providing that upon the giving of said security all further proceedings of this Court shall be suspended and stayed until the determination of said appeal to the said United States Circuit Court of Appeals for the Sixth Circuit.

Respectfully submitted,
Albert E. Meder,
Frank E. Cooper,
11th Floor, Ford Building,
Detroit, Michigan.
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.,
Mt. Clemens, Michigan.
Attorneys for defendant
Mt. Clemens Pottery Company.
By Frank E. Cooper.

Beaumont, Smith & Harris
Of Counsel
August ~~22~~ 21, 1944.

ORDER FIXING AMOUNT OF SUPERSEDEAS AND APPEAL BOND AND PROVIDING FOR STAY ON GIVING OF BOND

(Filed Aug. 29, 1944)

At a session of said Court held in the Federal Building in Detroit, Michigan, this 29th day of August, 1944.

Present: Hon. Frank A. Picard, District Judge.

The defendant having filed a motion for an order to be made fixing the amount of security which defendant shall give and furnish in connection with its appeal from the judgment hitherto rendered herein to the United States Circuit Court of Appeals for the Sixth Circuit, and providing upon giving of said security all further proceedings of this Court be suspended and stayed until the determination of said appeal to said United States Circuit Court of Appeals for the Sixth Circuit,

Now, Therefore, It Is Ordered that upon the said defendant Mt. Clemens Pottery Company filing with the Clerk of this Court a good and sufficient bond in the sum of $10,000.00 (to the effect that if the defendant shall prosecute the said appeal to effect and answer all damages and costs if it fails to make good its plea, then the said obligation to be void, else to remain in full force and virtue) all further proceedings in this Court shall be and they are hereby suspended and stayed until the determination of said appeal in the said United States Circuit Court of Appeals for the Sixth Circuit.

Frank A. Picard,
District Judge.

PETITION FOR ORDER DISPENSING WITH REPRODUCTION OF PHYSICAL EXHIBITS IN PRINTED RECORD

(Filed Sept. 7, 1944)

Now comes The Mt. Clemens Pottery Company, defendant herein, by its attorneys, and petitions this Honorable Court for an order dispensing with the reproduction in the printed record on appeal herein of the following physical exhibits:

1. Time clock cards, including Exhibits 1, 3, 5, 7-28, 31-42, 58, 62, 63, 74, 75, 82, 83, 93, 94, and 95. In this connection defendant shows unto the Court that several hundred time clock cards were received in evidence on the trial of said cause. These time clock cards could not be reduced accurately by any printing process inasmuch as they combine printed and handwritten words and figures. Any photostatic reproduction would fail to differentiate between the varied colors of various words and figures appearing on said time clock cards. An expense of several hundred dollars would be involved in any reproduction of these cards in the printed record. Any reproduction of such clock cards in the printed record would not serve the convenience of either Court or counsel but, on the contrary, any such reproduction would involve a wholly unnecessary expense and would serve only to unduly encumber the printed record. This defendant has designated for reproduction in full in the printed record one or more of such cards in order that the record will clearly and conveniently show the form and content thereof.

2. Annual earnings records of individual plaintiffs, including Exhibits 2, 6, 79, 85-89. These exhibits are large cards, tabulating the weekly earnings of individual plaintiffs. The form of the card is such as to render it impractical to reproduce them in printing, and extremely costly and inconvenient to attempt photostatic reproduction. This defendant has designated for reproduction in full in the printed record one or more of such cards in order that the printed record will clearly and conveniently show the form and content thereof. Further, for the other reasons set forth in detail with respect to the time clock cards, it would not serve the convenience of either Court or counsel to reproduce these annual earnings records in the printed record but would, on the contrary, unduly encumber the record. Further, the details of these individual earnings records have no bearing on issues in dispute herein.

3. Pay stubs, including Exhibits 4, 47, 48, and 59. These exhibits are samples of stubs issued to employees with their pay check. They were introduced to show the general method of the company in making wage payments and contain no data relevant to any issues in dispute herein.

4. Other miscellaneous physical exhibits, viz:

Payroll work sheets, including, for example, Exhibit 44. This is a large looseleaf volume containing several hundred large-sized pages, the same comprising work sheets used in computing the piecework earnings of employees of The Mt. Clemens Pottery Company. Comparatively few of the entries refer to any of the plaintiffs herein. These books show only the method of figuring wage payments and contain no data relevant to any issue here in dispute. This defendant has designated for reproduction in full in the printed record one or more of such

work sheets in order that the record will clearly and conveniently show the form and content thereof.

Exhibit 43, a bundle of rubber thumb cots which could not be reproduced in the printed record.

Exhibits 61 and 77, the same being decalcomania sheets which could not be reproduced in the printed record.

Exhibits 29 and 81, each containing numerous sheets showing payment of wages to a large group of employees in connection with an inspection conducted by the Wage Hour Division of the United States Department of Labor in 1939. The details of these sheets are in no way relevant to any issues here in dispute. Comparatively few of the names listed in these lengthy exhibits are those of plaintiffs herein.

Exhibit 49, a sheet of printed or mimeographed instructions said to have been posted in the Decorating Department, the same being wholly irrelevant to any disputed issues and inconvenient to reproduce in the printed record.

Exhibit 64, the Constitution of the United Pottery Workers of America. This is a booklet of several pages and reproduction would serve only to unduly encumber the printed record and increase unnecessarily the costs of preparing the same.

Exhibit 68, a printed copy of a collective agreement between Tampa Shipbuilding Company and the Metal Trades Department of the American Federation of Labor. This is a booklet of approximately forty-four pages, containing no information directly relevant to any of the issues in dispute herein, and the reproduction of the same in the printed record would serve only to unduly enlarge the same.

Exhibit 76, a large plan, showing the layout of the floor space in the Glost Belt Department. The reproduction thereof to the small size necessary for inclusion in the printed record would render the same practically illegible in many of its details.

Exhibit 90. A large map of the City of Mt. Clemens. This contains no data relevant to any issues in dispute herein and the reproduction thereof in the small size necessary for inclusion in the printed record would render it practically illegible in many of its details.

Respectfully submitted,
Albert E. Meder,
Frank E. Cooper,
11th Floor, Ford Building,
Detroit, Michigan.
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.,
Mt. Clemens, Michigan.
Attorneys for defendant,
Mt. Clemens Pottery Company.
By Frank E. Cooper.

Beaumont, Smith & Harris
Of Counsel
August 22, 1944.

ORDER DISPENSING WITH REPRODUCTION OF EXHIBITS IN PRINTED RECORD

(Filed Sept. 7, 1944)

At a session of said Court held in the Federal Building in Detroit, Michigan, this 7th day of September, 1944.

Present: Hon. Frank A. Picard, District Judge.

This cause having come on to be heard upon the petition of The Mt. Clemens Pottery Company, defendant herein, for leave to dispense with the reproduction in the printed record of certain physical exhibits, and the Court being fully advised in the premises, and on due consideration

It Is Hereby Ordered

That in the preparation of the printed record on appeal to the United States Circuit Court of Appeals for the Sixth Circuit the following exhibits will not be reproduced therein by printing or by photostatic processes, but that the same shall, in lieu of printing, be transmitted to the Clerk of the Sixth Circuit Court of Appeals as a part of the record herein, viz:

Time clock cards, including Exhibits 1, 3, 5, 7-28, 31-42, 58, 62, 63, 74, 75, 82, 83, 93, 94, and 95; Individual earnings records, including Exhibits 2, 6, 79, 85-89; Pay stubs, including Exhibits 4, 47, 48, and 59; Payroll record sheets such as Exhibit 44, and likewise Exhibits 29, 43, 61, 64, 68, 77, 81, and 90.

Frank A. Picard,
U. S. District Judge.

NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS UNDER RULE 73

(Filed Sept. 8, 1944)

To: The Clerk of Court
Edward Lamb,
Lowell Goerlich,
Attorneys for Plaintiffs-Appellees

Notice is hereby given that the Mt. Clemens Pottery Company, defendant above named, hereby appeals to the Circuit Court of Appeals for the Sixth Circuit from the final judgment entered in this action on June 13, 1944.

Albert E. Meder,
Frank E. Cooper,
11th Floor Ford Building,
Detroit 26, Michigan.
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.,
Mt. Clemens, Michigan.
Beaumont, Smith & Harris
Of Counsel
Attorneys for Defendant-Appellant

By Frank E. Cooper,
One of the attorneys for
Defendant-Appellant.

Sept. 8, 1944.

SUPERSEDEAS AND APPEAL BOND

(Filed Sept. 8, 1944)

Know All Men By These Presents that we, Mt. Clemens Pottery Company, of Mt. Clemens, Michigan, as Principal, And Fidelity and Deposit Company of Maryland, a Maryland Corporation, of Baltimore, Maryland, as Surety, are held and firmly bound unto the Plaintiffs in the above entitled cause in the full and just sum of Ten Thousand And No/100 Dollars ($10,000.00), to be paid to the said parties, their heirs, executors, administrators, successors, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Sealed with our seals and dated this 31st day of August, 1944.

Whereas, lately, in a suit pending in the United States District Court for the Eastern District of Michigan, between Steve Anderson, et al. plaintiffs, and Mt. Clemens Pottery Company, defendant, a judgment was rendered against the said defendant, and the said defendant has duly filed or is about to file notice of appeal from said judgment.

Now, the condition of the above obligation is such that if the said defendant Mt. Clemens Pottery Company shall prosecute its appeal with effect, and satisfy the said judgment in full, together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or the judgment is affirmed, and shall satisfy in full such modification of the judgment, and such costs, interest, and

damages as the Appellate Court may adjudge and award, then the above obligation to be void, otherwise to remain in full force and effect.

Mt. Clemens Pottery Company,
By: Chas. E. Doll
J. Wilson Petrie
Fidelity and Deposit
Company of Maryland.
By: George Bortz,
Attorney-in-Fact.
M. Campeau
Approved by: Frank A. Picard,
District Judge.

PROOF OF MAILING OF NOTICE OF APPEAL

(Filed Sept. 9, 1944)

United States of America,
Eastern District of Michigan—ss.

I, George M. Read, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that I did, on the 9th day of September A.D. 1944, send by mail copy of the Notice of Appeal in the above entitled cause to the following named persons at the address given:

Edward Lamb & Lowell Goerlich, 1014 Edison Bldg., Toledo, Ohio.

George M. Read,
Clerk,
By: John J. Ginther,
Deputy-Clerk.

Dated: Detroit, September 9, 1944.

DESIGNATION OF RECORD ON APPEAL BY DEFENDANT-APPELLANT

(Filed Sept. 8, 1944)

Comes now The Mt. Clemens Pottery Company, a Michigan corporation, by its attorneys, and pursuant to Rule 75 (a), Federal Rules of Civil Procedure, and Rule 10 (I) of the Rules of the Sixth Circuit Court of Appeals, files this designation of the portions of the record herein to be contained in the printed record on appeal.

I.
PLEADINGS, ORDERS, OPINIONS, JUDGMENT, ETC.

Defendant-Appellant hereby designates for printing in the record on appeal the following material pleadings, orders, findings of fact and conclusions of law, Master's report, and judgment, viz:

Table of calendar entries.

Complaint filed April 16, 1941.

Objections of Mt. Clemens Pottery Company to Interrogatories filed May 2, 1941.

Motions of the Mt. Clemens Pottery Company to limit scope of action and to strike certain allegations and to require furnishing of Bill of Particulars filed May 12, 1941.

Order denying motion to quash and dismiss entered June 13, 1941.

Designation of Albert Weier, et al.

Designation of Walter Selk, et al.

Designation of Harry May, et al.
Designation of Arthur Baxter, et al.
Designation of Ruth Gottschalk, et al.
Designation of Arthur Sibbe, et al.
Designation of H. Wilson, et al.
Bill of Particulars filed October 23, 1941.
Motion to strike or for further particulars filed November 1, 1941.
Order on motion of defendant to strike or for further particulars entered November 10, 1941.
Order extending time to file Amendment to the Bill of Particulars to December 15, 1941 entered November 24, 1941.
Amendment to Plaintiff's Bill of Particulars filed November 26, 1941.
Motion for Judgment and for Appointment of Special Master filed December 2, 1941. Hearing December 8, 1941.
Motion of Mt. Clemens Pottery Company to strike or for further particulars filed December 6, 1941. Hearing December 15, 1941.
Answer of Mt. Clemens Pottery Company to Motion for Judgment and for Appointment of Special Master filed December 12, 1941, omitting exhibits.
Order denying Motion for Judgment entered December 15, 1941.
Answer of Mt. Clemens Pottery Company and Motions to Dismiss and Strike filed January 2, 1942.
Order denying Plaintiff's request for Judgment without prejudice, etc., entered January 5, 1942.
Supplemental Order denying Plaintiff's request for Judgment without prejudice, etc., entered January 6, 1942.
Exceptions of Mt. Clemens Pottery Company to Supplemental Order of January 6, 1942 filed January 10, 1942.
Motion of Plaintiffs for Summary Judgment filed January 16, 1942. Hearing January 26, 1942.

Answer of Mt. Clemens Pottery Company to Motion for Summary Judgment filed January 24, 1942.

Order denying Motion for Summary Judgment entered January 27, 1942.

Order denying Motion for Summary Judgment and Referring Cause to Donald L. Quaife as Special Master entered January 28, 1942.

Supplemental Order denying Motion for Summary Judgment, etc., entered January 29, 1942.

Designation of Bill Behnke, et al.

Designation of Irene Nacker, et al.

Report of Special Master filed March 23, 1943.

Objections to Master's Report filed April 2, 1943.

Motion of Mt. Clemens Pottery Company for entry of Judgment on Report of Special Master filed April 3, 1943. Hearing April 12, 1943.

Order dismissing cause as to S. S. Kresge Co. with prejudice entered June 15, 1943.

Opinion of the Court entered July 2, 1943.

Motion of Plaintiffs to settle Findings of Fact, Conclusions of Law and for Judgment filed August 25, 1943.

Motion of Defendant requesting adoption of Findings and Conclusions.

Notice of settlement of findings of fact and conclusions of law.

Findings of Fact and Conclusions of Law filed September 13, 1943.

Preliminary Statement of Exceptions by defendant to Findings of Fact, etc., filed September 22, 1943.

Computations made in accordance with Court's findings filed December 11, 1943.

Notice of hearings on defendant's motion for findings, filed December 11, 1943.

Opinion of the Court filed March 3, 1944.

Motion to amend Findings of Fact and Conclusions of Law and for an entry of judgment filed May 24, 1944.

Objections to allowance of attorney fees filed June 12, 1944.

Judgment for plaintiffs in $2,415.74, attorney fees $2,000.00 and costs to be taxed entered June 13, 1944.

Petition for order dispensing with reproduction of physical exhibits in printed record.

Order fixing amount of Supersedeas and Appeal Bond and providing for stay on giving of bond.

Order dispensing with reproduction of exhibits in printed record.

Notice of Appeal.

Appeal Bond.

Appellant's designation of record on Appeal.

Appellant's statement of points on which appellant intends to rely.

II.

TRANSCRIPTS OF TESTIMONY AND ARGUMENTS

Defendant-Appellant hereby designates for inclusion in the printed record on appeal only the following portions of the transcripts of proceedings had before the Court in this cause, including the testimony of witnesses and arguments before the Court, viz:

PROCEEDINGS OF DECEMBER 15, 1941

Print the following:

Hearings on motion for judgment by default and motion for particulars, December 15, 1941.

Line 10, page 2, through line 7, page 5.

Line 1 through line 6, page 6.

Line 5, page 7, through line 7, page 8.

Line 6 through line 11, page 13.
Line 17, page 13, through line 16, page 14.
Line 5 through line 13, page 15.
Line 11 through line 15, and word "else" on line 16, page 16.
Line 13, page 18, through line 21, page 18.
Line 4, page 20, through line 20, page 20.
Line 11, page 24, through line 13, page 25.
Line 22, page 27, through line 8, page 30.
Line 1, page 32, through line 22, page 39.
Line 1, through line 24, page 41.
Line 24, page 42, through line 14, page 43.
Line 2, through line 13, page 44.

PROCEEDINGS OF JANUARY 26, 1942

Print the following:

Arguments on Motion of Plaintiffs for Summary Judgment, January 26, 1942.
Line 11, page 2, through line 17, page 14.

PROCEEDINGS OF FEBRUARY 9, 1942

Print the following:

Hearings before Special Master, February 9, 1942.
Insert the words "Mr. Cooper" and print the last line on page 46, and lines 1 and 2 on page 47.
Line 8 through line 17, page 47.
Line 14 through line 23, page 48.
Line 19 through line 22, page 49.
Line 1, page 50, through line 5, page 51.
Line 9, page 73, through line 20, page 74.
Line 12, page 75, through line 5, page 77.
Lines 9 and 10, page 78.
Line 17, page 78, through line 16, page 79.

Summarize line 17, page 79, through line 7, page 86, as follows:

"Exhibits 1-1 FF and 2-2C objected to by counsel for defendant on grounds that they had not been identified properly and on grounds that time clock cards were irrelevant in proving amount of time worked. The Master overruled the objections except that Exhibit 2-2C is admitted pursuant to stipulation that it is defendant's earning record, 'but it will have to be explained by some employee who has charge of keeping the records, before it will mean anything to the Court'."

Line 8, page 86, through line 13, page 90.

Summarize line 14, page 90, through line 11, page 99, as follows:

"Counsel for defendant objected on grounds that witness should not be permitted to testify as to activities of other employees, at least without specifying names and occasions; and that witness' testimony should be limited to his own claims. Objection overruled."

Line 12, page 99, through line 3, page 100.

Summarize line 4, page 100, through line 10, page 106, as follows:

"Answer of witness stricken by Master as conclusion."

Line 10, page 106, through line 20, page 106.

Line 24, page 106, through line 7, page 107.

Line 5, page 108, through line 19, page 112.

Line 22, page 112, through line 2, page 113.

Line 5, page 113, to the bottom of page 117.

Lines 3 and 4 on page 122.

Line 12, page 122, through line 8 on page 123.

Line 13 through line 22, page 123.

Summarize from line 23 on page 123 through line 17, page 125, as follows:

"Counsel for defendant moved that answer be stricken on grounds of immateriality. Objection overruled."

Insert "The Master" and print from line 24, page 182, through line 12, page 183.
Line 19, page 185.
Line 6 through line 10, page 186.
Line 19, page 187, through line 20, page 191.
Line 6, page 203, through line 22, page 204.
Line 1 through line 6, page 205.
Line 16, page 205, through line 8, page 211.
Line 12, page 211, through line 17, page 215.
Line 2, page 216, through line 17, page 218.
Line 4, page 221, through line 22, page 221.
Line 10, page 222, through line 10, page 228.
Line 12 through line 16, page 229.
Line 20, page 229, through line 23, page 230.
Line 1, page 231, through line 22, page 234.
Line 25, page 234, through line 19, page 235.
Line 10, page 238, through line 13, page 239.
Line 12 through line 17, page 241.
Line 1, page 242, through line 15, page 243.
Line 18, page 243, through line 14, page 244.
Line 17, page 244, through line 1, page 245.
Line 6, page 245, through line 13, page 247.
Line 25, page 247, through line 21, page 248.
Line 1, through line 8, page 249.
Line 14, page 249, through line 1, page 250.
Line 15, page 250, through line 6, page 251.
Line 1 through line 12, page 252.
Line 12, page 253, through line 20, page 254.
Line 5 through line 10, page 256.
Summarize line 11, page 256, through line 11, page 260, as follows:
"Counsel for plaintiffs objects."
Line 12, page 260, through line 25, page 261.
Line 17, page 263, through line 18, page 264.
Line 6 through line 8, page 265.
Lines 12 through 14, and line 17, page 268.
Line 19, page 268, through line 1, page 269.
Line 6 through line 9, page 269.
Line 12, page 269, through line 19, page 270.

Line 18, page 125, to bottom of page 125.
Line 23, page 126, through line 4, page 131.
Line 10 through line 18, page 131.
Line 22, page 135, through line 1, page 136.
Line 6 through line 8, page 137.
Line 22, page 137, through line 2, page 138.
Lines 6 through 8, page 138.
Line 13, page 138, through line 23, page 140.
Line 1, page 142, to bottom of page 144.
Line 18, page 145, through line 16, page 146.
Line 19, page 146, through line 17, page 147.
Lines 19 through 21, page 148.
Lines 4 through 21, page 149.
Line 6, page 150, through line 16, page 152.
Line 2, page 153, through line 1, page 154.

PROCEEDINGS OF FEBRUARY 12, 1942

Print the following:

February 12, 1942

Summarize line 1, page 155, through line 19, page 170, as follows:

"Counsel for defendant moved to strike testimony of witness Trombley as to doing additional work after punching out at time clock on grounds that it related to a new claim, outside scope of complaint and bill of particulars. Motion taken under advisement."

Line 8, page 171, through line 12, page 172.

Summarize from line 12, page 172, through line 7, page 174, as follows:

"Exhibit 4-4I received in evidence as example of method of making wage payments."

Line 8, page 174, through line 6, page 180.
Line 5, page 181, through line 14, page 181.
Line 1, page 182, through line 16, page 182.

Line 23, page 274, through line 2, page 276.
Line 4 through line 9, page 277.
Line 17, page 277, through line 5, page 278.
Line 18, page 279, through line 10, page 280.
Line 16, page 283, through line 25, page 283.
Line 12, page 284, through line 4, page 285.
Line 3 through line 5, page 290.
Line 11, page 291, through line 6, page 292.
Line 24, page 293, through line 8, page 294.
Line 13, page 294, through line 7, page 295.
Line 16 page 295, through line 10, page 297.
Line 20, page 297, through line 1, page 298.
Line 13, page 298, through line 6, page 300.
Line 11, page 300, through line 13, page 302.
Line 17, page 302, through line 5, page 303.
Line 9 through line 20, page 303.
Line 13, page 315, through line 16, page 316.
Line 20 through line 25, page 316.
Line 6, page 317, through line 16, page 318.
Line 1, page 323, through line 2, page 324.
Line 18, page 326, throuhg line 18, page 327.
Line 4, page 328, through line 10, page 329.
Line 6, page 330, through line 18, page 331.
Line 5, page 335, through line 23, page 338.
Line 12, page 340, through line 1, page 344.

PROCEEDINGS OF FEBRUARY 16, 1942

Print the following:

February 16, 1942

Line 22, page 351, through line 2, page 352.
Line 11, through line 21, page 352.
Line 7, page 353, through line 2, page 354.
Line 6, page 354, through line 14, page 355.
Line 24, page 355, through line 1, page 359.
Line 4 through line 12, page 359.
Line 19, page 359, through line 21, page 360.

Line 1, page 361, through line 10, page 362.
Line 23, page 365, through line 25, page 365.
Line 4, page 366, through line 12, page 368.
Line 1, page 370, through line 3, page 373.
Line 10, page 373, through line 18, page 377.
Line 11, page 378, through line 18, page 380.
Line 24, page 382, through line 15, page 383.
Line 17, page 387, through line 13, page 388.
Line 21, page 391, through line 2, page 392.
Line 15, page 396, through line 20, page 396.
Line 21, page 402, through line 1, page 403.
Line 6 through line 8, page 403.
Line 15 through line 23, page 403.
Line 18, page 407, through line 15, page 408.
Line 20, page 419, through line 25, page 420.
Line 4, page 424, through line 3, page 426.
Line 1 through line 11, page 427.
Line 3, page 428½, through line 2, page 429.
Lines 10 and 11, page 429.
Lines 5 through 7, page 445.
Line 17, page 455, through line 1, page 456.
Line 1, page 468, through the word "in" on line 4, page 468.
Line 17, page 468, through line 1, page 472.
Lines 13 and 14, page 472.
Lines 21 through 25, page 478.
Line 19, page 479, through line 16, page 482.
Line 11, page 484, through line 21, page 484.
Lines 17 through 19, page 494.

PROCEEDINGS OF FEBRUARY 17, 1942

Print the following:

February 17, 1942

Line 1 through line 9, page 502.
Line 11 through 14, page 502.
Line 16, page 502.
Line 20, page 502, through line 16, page 509.

Line 24, page 509, through line 3, page 514.
Line 8, page 514, through line 10, page 517.
Line 14, page 517, through line 3, page 519.
Line 12, page 519, through end of page 529½.
Line 20, page 530, through line 4, page 531.
Line 11 through line 17, page 537.
Line 22, page 538, through line 8, page 539.
Line 24, page 540, through word "No" on line 2, page 542.
Line 8, page 542, through line 11, page 543.
Line 3, page 545 (eliminating the word "No" immediately following "Q") through the word "Yes" on line 5, page 546.
Line 1, page 547, through line 1, page 550.
Line 4, page 550, through line 17, page 551.
Line 1, page 553, through line 1, page 554.
Line 14, page 554, through line 30, page 556.
Line 24, page 556, through line 6, page 559.
Summarize lines 7 through 13 on page 559 by correcting the transcript and substituting "1938" for "1940" on Line 24, page 558.
Line 14, page 559, through line 1, page 560.
Line 8, page 560, through line 1, page 561.
Line 15, page 561, through the word "immaterial" on line 8, page 562.
Line 12, page 582, through line 7, page 583.

PROCEEDINGS OF FEBRUARY 19, 1942

Print the following:

February 19, 1942

Line 8, page 638, through line 22, page 649.
Lines 19 and 20, page 650.
Line 4, page 651, through line 18, page 652.
Line 24, page 668, through the word "right" on line 6, page 669.

Line 4, page 693, through line 2, page 699.
Line 8, page 699, through line 2, page 700.
Line 2, through line 19, page 706.
Line 7, through line 12, page 707.
Line 13, page 708, through line 23, page 709.

PROCEEDINGS OF FEBRUARY 20, 1942

Print the following:

February 20, 1942

Lines 20 through 24, page 714.
Lines 10 through 18, page 715.
Line 21, page 715, through line 8, page 727.
Line 13, page 727, through line 9, page 728.
Line 12, page 732, through line 4, page 733.
Line 10, page 733, through line 24, page 736.
Line 9, page 738, through line 5, page 739.
Line 9, page 743, through line 19, page 743.
Line 15, page 748, through line 13, page 750.
Line 2, through line 25, page 752.
Lines 8 through 10, page 761.
Lines 8 and 9, page 762.
Line 8, page 763.
Lines 11 through 16, page 763.
Lines 22 and 23, page 763.
Line 25, page 764, through line 2, page 765.
Line 18 through line 23, page 766.
Line 2, page 767, through line 3, page 768.
Line 2, through word "objection" on line 22, page 769.
Line 18, page 772, through line 9, page 773.
Lines 13 and 14, page 773.
Line 17, page 773, through line 7, page 774.
Line 21, page 775, through line 25, page 779.
Line 6, page 780, through line 16, page 783.
Line 14, page 787, through line 25, page 789.
Line 3 through line 23, page 792.

Line 9 through line 20, page 796.
Line 3, page 799, through line 6, page 801.
Line 4 through line 19, page 802.
Line 1 through word "object" on line 12, page 803.
Line 19 through line 22, page 804.
Line 13, page 814, through line 12, page 815.
Line 22, page 815, through word "objection" on line 12, page 816.
Line 14 through line 17, page 818.
Line 25, page 820, through line 18, page 821.
Line 11, through line 13, page 823.
Line 4, page 824.
Line 17, page 824, through line 8, page 825.
Line 21, page 825, through line 25, page 825.
Line 7 through line 15, page 827.
Summarize line 16, page 827, through line 25 on page 830, as follows:
"Exhibit 29 received."
Line 1, page 831, through line 8, page 834.
Line 22, page 834, through line 25, page 834.
Line 25, page 840, through line 5, page 841.
Line 19, page 841, through line 22, page 842.
Line 9, page 843, through line 5, page 844.
Line 1, page 847, through line 25, page 847.
The phrase "Mr. Cooper: I object to that" on line 5, page 848.
Starting with the word "In" on line 10, page 848, through line 18, page 848.
Line 12, page 849, through line 24, page 850.
Line 7, page 851, through line 23, page 851.
Line 1 through line 8, page 852.
Line 12, page 852, through line 14, page 854.
Line 25, page 854.
Line 17, page 857, through line 14, page 858.
Lines 19 and 20, page 859.
Line 20, page 860, through line 18, page 861.
Line 2 through line 23, page 862.
Line 1 through line 7, page 863.
Line 20, page 865, through line 25, page 865.

Line 17, through line 20, page 866.
Summarize from line 21, page 866, through line 4, page 869, as follows:
"Walter Selk, Alfred Erke, Robert Daniels, Carl Schoof, Ray Wiley, Paul Frazo. Joyce Brousseau was a finisher on flat ware. Wells Clay was a batter-out. Albert Schiappacasse was another jiggerman."
Line 5, page 869, through line 11, page 870.
Line 23, page 871, through line 23, page 872.
Line 5, page 873, through line 11, page 875.
Line 14, page 875, through line 18, page 886.

PROCEEDINGS OF FEBRUARY 24, 1942

Print the following:

February 24, 1942

Line 1 through word "earnings" on line 13, page 896.
Insert "the Master" and print lines 8 through the word "way" on page 15, line 898.
Line 1, page 902, through line 8, page 903.
Insert "Q" and start with word "You" on line 10, page 904, through line 25, page 904.
Summarize from line 5, page 905 to line 25, page 905, as follows:
"Lucille Sabo, Lucille Pretzer. The Savarino girls also rode with me. There were three of them. There was another girl, I can't remember her name now."
Line 1, page 906, through line 5, page 907.
Line 10 through line 17, page 907.
Line 4 through line 10, page 908.
Summarize line 11, page 908, through line 9, page 911, as follows:
"Robert Daniels. I worked with him for about five months in the summer of 1940, I guess. Before that I worked a couple of months with Joe Versure. I worked with Walter Selk. I think I started to

work with him in December, 1940, and I was still working with him when the strike was called in April, 1941. I worked with Marvin Goldenbogen in the fall or early winter of 1940. I worked with Art Dagno for about a year, probably back in 1939."

Line 18 through line 21, page 913.

~~Summarize from line 22, page 913, to line 25, page~~ 915, as follows:

"Eleanor Bahorski was the last girl I worked with in there. She was working with me before the first strike. She worked in my group about a year. At various times Jean Tewksbury worked in our group. Maude Raleigh and Martha Raleigh worked in our group three or four different periods in 1939 and 1940. That is all I can remember now."

Line 1 through word "Sure" on line 5, page 916.

Line 17, page 916, through line 16, page 917.

Line 1 through line 17, page 919.

Line 12, page 921 through line 22, page 922.

Line 20 through line 22, page 925.

Line 1, page 926, through line 25, page 928.

Line 13, page 932, through line 16, page 933.

Line 14 through line 22, page 936.

Line 13, page 937, through line 1, page 939.

Line 6 through line 8, page 940.

Line 21, page 940, through line 19, page 945.

Line 4 through line 18, page 946.

Line 24, page 946, through line 4, page 947.

Line 18, page 947, through line 3, page 948.

Line 5, page 950, through line 3, page 951.

Line 11, page 951, through line 17, page 955.

Line 4, page 956, through line 9, page 961.

Line 20, page 961, through line 12, page 962.

Line 10, page 965, through line 25, page 965.

Line 4 through line 23, page 966.

Line 11, page 967, through line 23, page 969.

Line 1, page 972, through line 4, page 973.
Line 21, page 973, through line 17, page 974.
Line 21, page 975, through line 10, page 976.
Line 23, page 978, through line 24, page 981.
Line 14, page 983, through line 11, page 984.
Line 8, page 987, through line 9, page 989.
Line 19 through line 23, page 989.
Lines 9 and 10, page 990.
Lines 16, 17 and 18, page 991.
Line 8, page 992, through line 20, page 995.
Lines 7 through 9, page 998.
Line 12 through line 22, page 998.
Lines 3 through 5, page 999.
Lines 10 through 14, page 999.
Lines 2 and 3, page 1000.
Print "The Master"; and begin with the word "I" on line 17, page 1021, through line 6, page 1024.
Line 8, page 1024, through line 11, page 1028.
Line 15, page 1028, through line 2, page 1030.
Lines 13 through 16, page 1032.
Lines 19 through 25, page 1032.
Line 25, page 1033, through line 21, page 1034.
Line 25, page 1036, through line 10, page 1037.
Line 16, page 1037, through line 23, page 1038.
Line 11, page 1039, through line 2, page 1042.
Line 4 through line 7, page 1043.
Line 8, page 1045, through line 6, page 1048.
Line 15 through line 22, page 1048.
Line 4 through line 11, page 1050.
Line 11 through line 17, page 1058.
Line 17, page 1060, through line 7, page 1061.
Line 17, page 1061.
Line 14, page 1063, through line 4, page 1066.
Line 22, page 1066, through line 1, page 1067.
Line 3, page 1068, through line 23, page 1068.
Line 7, page 1073, through line 2, page 1075.
Lines 2 and 3, page 1076.

Line 16, page 1076, through line 15, page 1077.
Line 8 through line 10, page 1078.
Line 15, page 1078, through line 18, page 1079.
Line 2 through line 6, page 1085.
Line 1, page 1086, through line 7, page 1088.
Lines 1 and 2, page 1089.
Lines 23 and 24, page 1089.
Line 2 through line 9, page 1090.
Line 17 through line 20, page 1091.
Lines 22 and 23, page 1091.
Line 7 through line 22, page 1092.
Line 6 through line 21, page 1094.
Line 14, page 1095, through line 23, page 1096.
Line 8, page 1097, through line 16, page 1098.
Line 1, page 1099.
Line 7, page 1099, through line 21, page 1099, and in line 20 correct transcript by changing "estimation" to "explanation."
Line 1, page 1100, through line 12, page 1102.
Line 19, page 1102, through line 7, page 1106.
Line 20, page 1106, through line 5, page 1107.
Line 11, page 1107, through line 4, page 1108.
Lines 13 and 14, page 1108.
Line 23, page 1108, through line 18, page 1110.

PROCEEDINGS OF FEBRUARY 25, 1942

Print the following:

February 25, 1942

Line 7, page 1121, through line 13, page 1122.
Line 18, page 1122, through line 22, page 1122.
Lines 4 and 5, page 1124.
Line 10 through line 21, page 1124.
Line 4, page 1125, through line 22, page 1125.
Line 24, page 1140, through line 12, page 1142.

Line 19, page 1143, through line 1, page 1144.
Line 20, page 1144, through line 17, page 1145.
Line 23, page 1151, through word "worked" on line 19, page 1152.
Line 7, page 1153, through line 20, page 1156.
Line 8, page 1157, through line 25, page 1162.
Line 14, page 1163, through line 6, page 1165.
Lines 12 through 18, page 1165.
Line 23, page 1165, through line 20, page 1167.
Line 6, page 1168, through line 18, page 1168.
Lines 18 through 22, page 1169.
Line 16, page 1174, through line 3, page 1176.
Line 21, page 1177, through line 8, page 1178.
Line 11, page 1179, through line 5, page 1180.
Lines 11 through 13, page 1180.
Line 17, page 1180, through line 7, page 1181.
Line 1 through line 6, page 1184.
Lines 24 and 25, page 1184, through line 5, page 1185.
Line 12, page 1185, through line 23, page 1186.
Line 14, page 1189, through line 10, page 1190.
Line 9, page 1191, through line 13, page 1192.
Line 10, page 1193, through line 8, page 1195.
Line 6, page 1198, through line 15, page 1198.
Line 4, page 1199, through line 6, page 1201.
Lines 11 and 12, page 1201.
Line 23, page 1201, through line 4, page 1204.
Line 20, page 1204, through line 23, page 1205.
Line 16, page 1207, through line 9, page 1209.
Line 4, page 1210, through line 1, page 1211.
Lines 9 through 18, page 1212.
Lines 1 through 7, page 1214.
Line 14, page 1214, through line 23, page 1215.
Lines 1 through 9, page 1225.
Line 24, page 1225, through line 7, page 1226.
Line 25, page 1226, through line 3, page 1227.
Line 11, page 1227, through line 7, page 1230.
Change word "day" on lines 8 and 9, page 1230, to "pay."

Line 10, page 1230, through line 24, page 1236.
Line 5, page 1237, through line 2, page 1238.
Line 18, page 1238, through line 17, page 1239.
Line 12, page 1240, through line 21, page 1240.
Line 2, page 1241.
Lines 16 through 20, page 1241.
Line 3, page 1242, through line 10, page 1242.
Lines 13 through 16, page 1242.
Line 22, page 1242, through line 15, page 1243.
Line 3, page 1244.
Lines 12 through 16, page 1244.
Line 7, page 1245, through line 7, page 1247.
Line 2, page 1250, through line 24, page 1250.
Line 22, page 1254, through line 5, page 1255.
Line 7, page 1257, through line 6, page 1258.
Line 18, page 1258, through line 2, page 1259.
Lines 11 and 12, page 1260.
Line 5, page 1252, through line 1, page 1263.
Line 21, page 1263, through line 2, page 1264.
Line 19, page 1265, through line 25, page 1265.
Line 10, page 1268, through line 4, page 1270.
Line 5, page 1271, through line 8, page 1272.
Line 12, page 1273, through line 2, page 1274.
Line 4, page 1275, through line 4, page 1278.
Lines 14 through 18, page 1278.
Line 25, page 1278, through line 16, page 1281.
Line 15, page 1283, through line 9, page 1284.
Line 16, page 1284, through line 5, page 1286.
Line 16, page 1288, through line 25, page 1288.
Line 11, page 1291, through line 25, page 1291.

Summarize from line 1, page 1292, through line 8, page 1294, as follows:

"Susie Crew; Marion Setty; Loraine Jackson; Elsie Graham, Margaret Henry; Margaret Dekiere; Leona DeBussehere; Irene Miller, Wilma Redlowski. Ilene Snyder. Those include both brushers and dipping girls. Among the men dippers were Steve Ander-

son, Howard Bliemeister, Louis Thurman, Nelson Luchtman. That is all I can think of right now. Counsel for plaintiffs state their purpose is to get before the Court the persons who are similar to the witness. Counsel for defendant moved to strike on the grounds that giving the names of other persons in the same department is not evidence as to the hours claimed to be worked by such persons. Master rules that he does not see much relevancy but will let the list stand."

Line 9, page 1294, through line 3, page 1296.
Line 11, page 1296, through line 15, page 1298.
Line 1, through line 11, page 1299.
Line 26, page 1299, through line 10, page 1301.
Lines 15, 16, and 17, page 1301.
Line 3, page 1302, through line 17, page 1306.
Line 12, page 1307, through line 22, page 1307.
Line 25, page 1309, through line 15, page 1310.
Line 22, page 1310, through line 1, page 1313.
Line 7, page 1314, through line 5, page 1315.
Line 18, page 1315, through line 4, page 1316.
Line 1, page 1317, through line 6, page 1320.
Line 12, page 1320, through line 20, page 1320.
Line 23, page 1321, through line 13, page 1324.
Lines 18 through 22, page 1324.

PROCEEDINGS OF FEBRUARY 26, 1942

Print the following:

February 26, 1942

Lines 7, 8 and 9, page 1346, and line 19, page 1346, through line 6, page 1347.
Line 24, page 1348, through line 8, page 1349.
Line 13, page 1350, through line 5, page 1352.
Line 16, page 1355, through line 3, page 1356.
Lines 19 through 24, page 1358.

Lines 2 through 23, page 1359.
Lines 8 through 13, page 1361.
Lines 22 through 24, page 1361.
Lines 1 through 15, page 1363.
Lines 4 through 6, page 1364.
Lines 1 through 5, page 1370.
Lines 7 through 20, page 1371.
Line 7, page 1378, through line 2, page 1379.
Lines 16 through 21, page 1380.
Line 8, page 1381, through line 23, page 1383.
Line 14, page 1384, through line 11, page 1388.
Line 3, page 1389, through line 14, page 1390.
Line 19, page 1390, through line 11, page 1392.
Lines 5 through 17, page 1393.
Lines 23 and 24, page 1393.
Lines 5, 6 and 7, page 1394.
Lines 1 through 3, page 1395.
Lines 17 through 20, page 1395.
Lines 24 and 25, page 1395.
Lines 1 through 5, page 1396.
Line 24, page 1397, through line 1, page 1399.
Lines 7 through 16, page 1399.
Lines 1 through 4, page 1400.
Lines 7 through 9, page 1400.
Lines 13 through 21, page 1400.
Lines 3 through 11, page 1401.
Lines 9 through 14, page 1407.
Line 1, page 1408, through line 11, page 1409.
Lines 16 through 24, page 1409.
Line 8, page 1412, through line 9, page 1414.
Line 17, page 1414, through line 20, page 1415.
Lines 1 through 23, page 1417.
Lines 3 through 11, page 1418.
Lines 7 through 16, page 1419.
Line 21, page 1420, through line 3, page 1421.
Line 23, page 1425, through word "don't" on line 2, page
Lines 2 through 15, page 1427.

Lines 12 through 17, page 1428.
Lines 3 through 5, page 1428½.
Lines 1 through 6, page 1431.
Lines 12 through 20, page 1431.
Lines 10 through 20, page 1433.
Line 23, page 1433.
Lines 8 through 21, page 1434.
Line 22, page 1435, through word "objection" on line 25, page 1435.
Line 19, page 1436, through line 5, page 1438.
Lines 13 through 19, page 1457.
Lines 24 through 25, page 1457.
Line 1, page 1458.
Line 4, page 1459, through line 10, page 1460.
Line 20, page 1460, through line 13, page 1461.
Line 22, page 1461, through line 3, page 1464.
Lines 15 through 17, page 1467.
Line 22, page 1467, through line 11, page 1468.
Line 21, page 1468, through line 9, page 1469.
Line 20, page 1480, through line 17, page 1482.
Line 19 starting with word "Bisque" on page 1482, through line 13, page 1483.
Line 21, page 1483, through line 11, page 1484.
Lines 13 through 22, page 1485.
Lines 4 through 13, page 1486.
Lines 21 through 25, page 1486.
Line 22, page 1489, through line 6, page 1491.
Lines 18 through 20, page 1491.
Lines 7 through 11, page 1492.
Line 15, page 1482, through line 12, page 1495.
Line 1. page 1496, through line 7, page 1498.
Line 4, page 1501, through line 3, page 1503.
Line 10, page 1503, through line 7, page 1504.
Line 8, page 1507, through line 5, page 1508.
Line 15, page 1510, through line 11, page 1511.

PROCEEDINGS OF FEBRUARY 27, 1942

Print the following:

February 27, 1942

Examination of Charles E. Doll, Sr., continued.

Line 3, page 1515, through word "objection" on line 2, page 1516.
Lines 9 through 11, page 1520.
Line 7, page 1521, through line 7, page 1523.
Lines 1 and 2, page 1524.
Lines 9 and 10, page 1524.
Lines 13 and 14, page 1524.
Lines 19 and 20, page 1524.
Line 9, page 1525, through line 19, page 1529.
Line 7, page 1531, through line 20, page 1532.
Lines 1 through 3, page 1533.
Line 15, page 1533, through line 7, page 1534.
Lines 1 through 7, page 1534.
Lines 24 and 25, page 1535.
Lines 12 through 23, page 1538.
Lines 8, page 1541, through line 2, page 1543.
Line 23, page 1544, through line 2, page 1546.
Lines 17 through 21, page 1546.
Line 11, page 1547, through line 10, page 1548.
Line 7, page 1557, through line 6, page 1559.
Line 14, page 1565, through line 1, page 1566.
Lines 8 through 15, page 1566.
Lines 2 through 8, page 1568.
Lines 15 through 22, page 1571.
Lines 10 through 21, page 1573; and add "Objection Overruled."
Line 15, page 1575, through line 21, page 1576.
Lines 6 through 19, page 1577.
Lines 24, page 1579, through line 22, page 1580.
Lines 1 and 2, page 1581.
Lines 1 through 16, page 1596.
Line 1, page 1597, through line 6, page 1598.
Lines 10 through 17, page 1598.

Line 22, page 1598, through line 22, page 1599.
Lines 16 through 22, page 1600.
Lines 3 through 18, page 1601.
Line 7, page 1602, through line 19, page 1604.
Lines 8 through 20, page 1605.
Line 16, page 1607, through line 24, page 1609.
Line 13, page 1610, through line 6, page 1611.
Line 7, through line 21, page 1615.
Line 12, page 1616, through line 16, page 1617.
Line 16, page 1618, through line 25, page 1619.
Line 16, page 1620, through line 12, page 1623.
Line 6, page 1624, through line 16, page 1625.
Lines 7 through 10, page 1626.
Line 1, page 1627.
Line 4, page 1627, through line 22, page 1630.
Lines 10 through line 22, page 1635.
Lines 1 through 3, page 1642.
Lines 14 through 17, page 1642.
Lines 7 through 19, page 1643.
Line 24, page 1643, through line 2, page 1644.
Line 5, page 1647, through line 5, page 1649.
Line 14, page 1651, through line 23, page 1651.
Line 14, page 1653, through line 3, page 1654.
Lines 5 through 10, page 1655.
Lines 17 through 25, page 1655.
Lines 15 through 20, page 1656.
Line 18, page 1658, through line 20, page 1659.
Line 4, page 1661, through line 4, page 1662.

PROCEEDINGS OF MARCH 3, 1942

Print the following:

March 3, 1942

Summarize line 1, page 1687, through line 14, page 1703, as follows:

"Counsel for defendant renew motion to strike testimony concerning alleged deductions from pay."

Line 14, page 1703, through line 8, page 1704.
Line 6, page 1708, through line 2, page 1709.
Line 25, page 1709, through line 1, page 1710.
Lines 16 through 22, page 1710.
Insert "The Master:" and print lines 2 and 3, page 1711.
Line 7, page 1712, through line 2, page 1714.
Line 2, at word "Before" through line 11, page 1715.
Line 8, page 1716, through line 19, page 1718.
Line 23, page 1718, through line 15, page 1720.
Line 20, page 1722, through line 14, page 1723.
Line 7, page 1736, through line 23, page 1736.
Lines 6 through 19, page 1738.
Line 7, page 1767, through line 12, including "1940." page 1768.
Lines 7 through 19, page 1769.
Line 4, pages 1780, through line 19, page 1781.
Lines 1 through 10, page 1782.
Line 14, page 1784, through line 3, page 1793.
Lines 12 through 14, page 1793.
Line 19, page 1793.
Lines 24 and 25, page 1793.
Line 3, page 1794, through line 16, page 1795.
Line 9, page 1798, through line 7, page 1799.
Lines 15 through 25, page 1799.
Line 11, page 1800, through line 7, page 1801.
Line 15, page 1801, through line 18, page 1804.
Line 22, page 1806, through line 10, page 1808.
Line 4, page 1812, through line 1, page 1813.
Line 10, page 1813, through line 7, page 1815.
Line 25, page 1815, through line 21, page 1816.
Lines 3 through 13, page 1818.
Line 13, page 1822, through line 7, page 1823.
Line 21, page 1824, through line 12, page 1825.
Line 12, page 1826, through line 19, page 1829.
Line 25, page 1829.
Line 6, page 1830, through line 16, page 1831.
Lines 21 and 22, page 1831.
Line 20, page 1832, through line 6, page 1833.

Line 20, page 1833, through line 7, page 1834.
Line 18, page 1834, through line 10, page 1835.
Lines 2 through 11, page 1836.
Line 17, page 1836, through line 2, page 1837.

PROCEEDINGS OF MARCH 4, 1942

Print the following:

March 4, 1942

Lines 14 through 20, page 1838.
Lines 2 through 9, page 1839.
Lines 3 through 9, page 1841½.
Line 11, page 1842, through line 25, page 1843.
Line 7, page 1844, through line 17, page 1845.
Line 23, page 1845, through line 1, page 1846.
Lines 2 and 3, page 1847.
Lines 13 through 19, page 1848.
Lines 13 through 15, page 1849.
Lines 10 through 25, page 1850.
Lines 5 and 6, page 1853.
Lines 16 through 25, page 1853.
Line 1, page 1854, through line 3, page 1865.
Line 6, page 1865, through line 15, page 1867.
Line 15, page 1868, through line 5, page 1870.
Lines 17 through 19, page 1870.
Lines 14 through 18, page 1871.
Line 23, page 1873, through line 17, page 1875.
Line 13, page 1890, through line 18, page 1891.
Lines 1 through line 20, page 1892.
Lines 15 and 16, page 1893.
Line 17, page 1894, through line 20 to word "to" and add "58-MM". p. 1897.
Start at word "to" on line 25, page 1897, through word "cross-examination" on page 1900, line 16.
Line 14, page 1943, through line 14, page 1944.
Line 19, page 1944, through line 2, page 1946.

Line 18, page 1959, through line 11, page 1961.
Lines 17 through 20, page 1961.
Line 3, page 1962, through line 18, page 1964.
Lines 7 through 20, page 1968.
Line 13, page 1969, through line 1, page 1970.
Line 3 through line 9, page 1971.
Lines 6 through 16, page 1972.
Lines 10 through 23, page 1974.
Line 13, page 1975, through line 4, page 1976.
Line 22, page 1976, through line 13, page 1977.
Insert "Mr. Nunneley" and print line 8, p. 1978, through line 22, page 1978.
Line 3, page 1979, through line 17, page 1982.
Line 22, page 1982, through line 15, page 1985.
Lines 3 through 13, page 1986.
Line 20, page 1986, through line 24, page 1987.
Lines 16 through 18, page 1988.
Line 8, page 1989, through line 16 page 1990.
Lines 12 through 17, page 1991.
Line 3, page 1992, through line 20, page 1992.
Lines 1 through 10, page 1992½.
Line 1, page 1993, through line 2, page 1994.
Line 19, page 1995, through line 11, page 1996.
Lines 20 through 24, page 1996.
Line 9, page 1998, through line 25, page 1998.
Lines 6 through 10, page 2002.
Line 14, page 2003, through word "objection" on line 17, page 2004.
Insert "The Master:" and print line 2, page 2015, through line 6, page 2015.
Lines 17 through 25, page 2015.
Lines 14 through 22, page 2017.
Lines 1 through 4, page 2018.
Line 4, through line 11, page 2025.
Line 13, page 2026, through line 1, page 2027.
Lines 13 through 21, page 2028.
Lines 12 and 13, page 2029.
Line 11, page 2031, through line 20, page 2032.
Line 6, page 2033, through line 25, page 2033.

Line 6, page 2034.
Lines 6 through 24, page 2036.
Line 11, page 2037.
Line 1, page 2038, through line 2, page 2043.

PROCEEDINGS OF JUNE 8, 1942

Print the following:

June 8, 1942

Line 16, page 2049, through line 3, page 2061.
Line 6, page 2064, through line 8, page 2075.
Lines 18 through 25, page 2076.
Line 26, page 2077.
Lines 3 through 8, page 2078.
Line 16, page 2078, through line 12, page 2079.
Lines 17 through 19, page 2079.
Line 11, page 2080, through line 5, page 2083.
Lines 16 through 19, page 2083.
Line 25, page 2083, through line 4, page 2085.
Line 7, page 2086, through line 19, page 2086.
Line 15, page 2087, through line 10, page 2089.
Line 19, page 2089, through line 15, page 2090.
Line 18, page 2092, through line 16, page 2093.
Line 23, page 2093, through line 2, page 2094.
Line 24, page 2094, through line 13, page 2095.
Lines 1 through 16, page 2099.
Start at word "I," line 11, through line 18, page 2100.
Lines 20 through 25, page 2102.
Line 13, page 2105, through line 9, page 2106.
Line 20, page 2106, through line 2, page 2108.
Line 21, page 2108, through line 4, page 2109.
Lines 1 through 4, page 2110.
Lines 14 through 16, page 2110.
Lines 3 through 14, page 2111.
Lines 8 and 9, page 2114.
Line 13, page 2114, through line 7, page 2115.

Line 25, page 2116.
Lines 14 through 22, page 2119.
Line 25, page 2119, through line 17, page 2120.
Lines 22 through 24, page 2133.
Lines 2 and 3, page 2134.
Lines 16 through 24, page 2134.
Lines 5 through 10, page 2135.
Lines 8 through 13, page 2136.
Lines 18 through 25, page 2136.
Lines 1 and 2, page 2137.
Lines 12 through 17, page 2137.
Line 25, page 2138.
Line 22, page 2139, through line 2, page 2140.
Line 12 through 18, page 2140.
Lines 3 through 9, page 2141.
Line 25, page 2141, through line 9, page 2142.
Line 1 through line 12, page 2143.
Line 15, page 2143, through line 1, page 2147.
Line 10, page 2147, through line 11, page 2149.
Lines 10 and 11, page 2150.
Line 3, page 2151.
Line 6 through line 7, page 2151.
Lines 10 through 12, page 2151.
Line 8, page 2152.
Lines 9 through 21, page 2154.
Lines 12 through 19, page 2155.
Lines 2 through 7, page 2156.
Line 1, page 2158, through line 6, page 2159.

PROCEEDINGS OF JUNE 9, 1942

Print the following:

June 9, 1942

Lines 2 through 20, page 2166.
Line 23, page 2166, through line 20, page 2167.
Line 17, page 2168, through line 2, page 2170.
Lines 18 through 20, page 2170.

Lines 17 through 19, page 2171.
Lines 5 through line 10, page 2172.
Lines 17 through 25, page 2172.
Line 21, page 2173, through line 7, page 2174.
Line 24, page 2174, through line 3, page 2175.
Lines 8 through 18, page 2175.
Line 18, page 2176, through line 6, page 2177.
Lines 1 through 4, page 2178.
Lines 10 through 12, page 2182.
Lines 10 through 14, page 2183.
Line 18, page 2183, through line 18, page 2184.
Line 23, page 2185, through line 9, page 2186.
Line 19, page 2186, through line 1, page 2187.
Line 3, page 2193, through line 6, page 2194.
Lines 8 through 10, page 2195.
Line 18, page 2195, through line 11, page 2196.
Line 17, page 2196, through line 7, page 2199.
Lines 10 through 12, page 2199.
Lines 3 through line 7, page 2200.
Lines 1 through 8, page 2201.
Lines 9 through line 22, page 2203.
Lines 14 through 20, page 2207.
Lines 2 through 6, page 2208.
Lines 18 and 19, page 2208.
Line 23, page 2208, through line 2, page 2209.
Line 7, page 2210.

PROCEEDINGS OF JUNE 16, 1942

Print the following:

June 16, 1942

Line 12, page 2216, through line 2, page 2217.
Line 19, page 2217, through line 5, page 2219.
Line 15, page 2219, through line 22, page 2221.
Line 12 through 15, page 2222.
Summarize line 16, page 2222, through line 6, page 2225 as follows:

"Witness demonstrates the aisles which were followed."
Line 7, page 2225, through line 15, page 2232.
Insert (Exhibits 30-A and 65 Received in Evidence) after line 15, page 2232.
Line 23, page 2234, through line 2, page 2235.
Lines 11 through 14, page 2235, and line 15 up to word "convenient."
Lines 21 through 24, page 2235.
Line 11, page 2238, through line 22, page 2247.
Line 18, page 2249, through line 6, page 2249.
Line 21, page 2253, through line 9, page 2254.
Lines 1 through 5, page 2255.
Line 8, page 2255, through line 7, page 2256.
Line 18, page 2256, through line 20, page 2262.
Lines 1 through 25, page 2263.
Lines 3 through 7, page 2264.
Lines 12 through 20, page 2264.
Lines 1 through 14, page 2265.
Lines 20, page 2265, through line 8, page 2266.
Line 25, page 2266, through line 4, page 2267.
Line 17, page 2268, through line 1, page 2270.
Line 5, page 2270, through line 5, page 2278.
Lines 3 through 5, page 2281.
Line 17, page 2281, through line 7, page 2282.
Line 21, page 2285, through line 16, page 2286.
Line 22, page 2286, through line 23, page 2287.
Lines 19 through 24, page 2289.
Lines 5 through 22, page 2290.
Line 4, page 2291, through line 19, page 2292.
Line 5, page 2293, through line 10, page 2293.
Line 11, page 2294, through line 10, page 2299.
Line 24, page 2299, through line 11, page 2301.
Line 17, page 2301, through line 15, page 2302.
Lines 8 through 10, page 2303.
Line 15, page 2303, through line 19, page 2304.
Line 5, page 2305, through line 16, page 2306.
Line 25, page 2306, through line 13, page 2307.

Insert "Objection Overruled," after line 13, page 2307.
Line 19, page 2307, through line 2, page 2309.
Line 24, page 2309, through line 23, page 2313.
Line 2 through line 21, page 2314.
Line 18, page 2315, through line 25, page 2316.
Line 13, page 2318, through line 22, page 2323.
Line 9, page 2324, through line 9, page 2325.
Lines 14 through 17, page 2328.
Line 8, page 2331, through line 2, page 2332.
Lines 10 through 14, page 2332.
Line 6, page 2333, through line 2, page 2334.
Lines 11 through 18, page 2334.
Lines 6 through 14, page 2335.
Line 20, page 2335, through line 13, page 2339.
Line 20, page 2340, through line 6, page 2354.
Line 14, page 2354, through line 25, page 2354.
Lines 1 through 6, page 2354½.
Line 11, page 2359, through line 9, page 2360.
Lines 1 through 15, page 2366.
Lines 22, page 2366, through line 1, page 2367.
Line 6, page 2367, through line 11, page 2376.
Line 3, page 2380, through line 6, page 2382.

PROCEEDINGS OF JUNE 17, 1942

Print the following:

June 17, 1942

Line 17, page 2386, through line 13, page 2387.
Lines 20 through 23, page 2387.
Lines 7 through 12, page 2389.
Lines 4 through 19, page 2390.
Line 25, page 2390, through line 14, page 2391.
Line 1, page 2393, through line 17, page 2400.
Line 25, page 2400, through line 17, page 2402.

Lines 13 through 21, page 2407.
Lines 3 through 20, page 2408.
Line 25, page 2413, through line 9, page 2414.
Line 14, page 2414, through line 11, page 2420.
Line 16, page 2420, through line 13, page 2421.
Line 15, page 2425, through line 1, page 2426.
Lines 14 through word "exactly" on line 18, page 2426.
Lines 8 through 14, page 2427.
Line 18, page 2428, through line 6, page 2431.
Lines 8 through 12, page 2432.
Line 6, page 2433, through line 8, page 2434.
Lines 4 through 13, page 2437.
Lines 4, p. 2438 through line 8, page 2439.
Lines 6 through 9, page 2440.
Line 22, page 2440, through line 25, page 2443.
Lines 16 through 24, page 2445.
Line 4, page 2446, through line 24, page 2449.
Line 18, page 2450, through line 1, page 2451.
Lines 13 through "Mr. Phillips?" on line 19, page 2451.
Line 24, page 2451.
Lines 9 through 19, page 2457.
Line 22, page 2457.
Line 17, page 2459, through line 18, page 2460.
Line 8, page 2461, through line 14, page 2462.
Line 11, page 2463, through line 15, page 2464.
Lines 5 through 19, page 2465.
Lines 3 through 6, page 2466.
Lines 9 through 14, page 2466.
Line 20, page 2466, through line 13, page 2468.
Line 14, page 2468, through line 9, page 2472.
Lines 11 through 24, page 2474.
Line 5, page 2475, through line 25, page 2475.
Line 3, page 2476, through line 9, page 2487.
Line 20, page 2487, through line 1, page 2488.
Lines 11 through 15, page 2488.
Lines 3 through 22, page 2489.
Line 11, page 2490, through line 14, page 2499.

PROCEEDINGS OF JUNE 18, 1942

Print the following:

June 18, 1942

Line 10, page 2500, through line 1, page 2504.
Lines 24 and 25, page 2504.
Line 21, page 2505, through line 1, page 2506.
Line 7, page 2506, through line 16, page 2517.
Line 19, page 2517, through line 15, page 2519.
Line 5, page 2520, through line 3, page 2526, and insert "Objection Overruled."
Lines 17 through 25, page 2526.
Lines 2 and 3, page 2529.
Line 4, page 2531, through line 5, page 2533.
Line 10, page 2533, through line 6, page 2534.
Line 14, page 2534, through line 10, page 2539.
Line 25, page 2540, through line 4, page 2542.
Line 20, page 2542, through word "Overruled" on line 21, page 2543.
Lines 8 and 9, page 2544.
Line 1, page 2544½, through line 18, page 2545.
Line 15, page 2546, through line 11, page 2552.
Line 4, page 2553, through line 18, page 2554.
Line 24, page 2554, through line 3, page 2555.
Line 11, page 2555, through line 4, page 2557.
Line 13, page 2557, through line 3, page 2563.
Line 12, page 2564, through line 25, page 2565.
Line 3, page 2566, through line 3, page 2567.
Line 14, page 2567, through line 14, page 2568.
Line 19, page 2568, through line 17, page 2569.
Line 23, page 2569, through line 18, page 2572.
Line 16, page 2573, through line 17, page 2575.
Line 1, page 2576, through line 6, page 2582.
Line 11, page 2582, through line 1, page 2583.
Lines 9 through 19, page 2583.
Line 24, page 2584, through line 12, page 2585.

Line 24, page 2585.
Lines 5 through 9, page 2586.
Line 18, page 2586, through line 3, page 2587.
Lines 9 through 11, page 2587.
Line 14, page 2588, through line 7, page 2591.
Line 24, page 2591, through line 18, page 2592.
Line 23, page 2592, through line 8, page 2594.
Line 11, page 2596, through line 12, page 2597.
Line 22, page 2597, through line 11, page 2602.
Line 20, page 2602, through line 24, page 2603.
Line 15, page 2604, through line 26, page 2605.
Line 19, page 2606, through line 12, page 2607.
Line 6, page 2608, through line 14, page 2612.
Line 19, page 2612, through line 19, page 2614, and add "Objection Overruled" after line 19, page 2614.
Line 8, page 2615, through line 22, page 2615, and add "Objection Overruled" after line 19, page 2614.
Line 24, page 2617, through line 12, page 2619.
Line 19, page 2619, through line 10, page 2620.
Lines 1 through 4, page 2621, and add "Objection" after line 4, page 2621.
Line 11, page 2622, through line 9, page 2623.
Line 9, page 2626, through line 2, page 2627.
Lines 5 through 8, page 2627.
Line 20, page 2627, through line 5, page 2628.
Lines 20 through 24, page 2629.
Lines 16 through 23, page 2630.
Line 6, page 2631, through line 3 to word "Objection" on page 2632.
Line 18, page 2634, through line 1, page 2635.
Line 8, page 2635, through figure "80-C" on line 9, page 2635.
Lines 1 through 5, page 2637.
Line 24, page 2637, through line 2, page 2638.
Lines 6 through 16, page 2638.
Line 2, page 2639, through line 18, page 2641.
Lines 7 through 10, page 2642.
Line 24, page 2648, through line 3, page 2649.

Lines 12 and 13, page 2649.
Lines 18 through 20, page 2649.
Line 3, page 2651, through line 25, page 2651.
Lines 7 through 11, page 2652.

PROCEEDINGS OF JUNE 19, 1942

Print the following:

June 19, 1942

Lines 21 through 25, page 2653.
Lines 2 through 11, page 2655.
Lines 16 through 19, page 2655.
Lines 8 through 12, page 2656.
Lines 1 through 5, page 2657.
Line 1, page 2658, through line 16, page 2660.
Line 3, page 2661, through line 16, page 2662.
Line 25, page 2662, through line 22, page 2671.
Lines 1 through 3, page 2686.
Lines 10 through 17, page 2686.
Line 1 through 12, page 2687.
Line 18, page 2687, through line 4, page 2688.
Line 11, page 2688, through line 2, page 2692.
Line 14, page 2692, through line 25, page 2692.
Lines 8 through 13, page 2693.
Lines 19 through 25, page 2693.
Line 1, page 2694, through line 22, page 2700.
Line 4, page 2701, through line 25, page 2701.
Lines 2 through 18, page 2703.
Lines 21 through 24, page 2703.
Line 12, page 2704, through line 25, page 2704.
Lines 12 through 16, page 2705.
Lines 2 through 5, page 2706.
Line 9, page 2706, through line 8, page 2707.
Lines 6 through line 11, page 2711.
Line 22, page 2711, through line 14, page 2712.
Lines 1 and 2, page 2713.
Line 23, page 2713, through line 17, page 2716.

Lines 1 through 5, page 2717.
Lines 5 through word "specific," on line 6, page 2719.
Line 25, page 2719, through line 15, page 2721.
Line 14, page 2722, through line 7, page 2726.
Lines 14 through 16, page 2726.
Line 20, page 2726, through line 12, page 2729.
Line 20, page 2729, through line 7, page 2730.
Line 14, page 2730, through line 1, page 2732.
Lines 14 through 21, page 2733.
Lines 9 through 13, page 2734.
Line 6, page 2735, through line 23, page 2735.
Lines 5 through 7, page 2736.
Lines 15 through 17, page 2736.
Line 1, page 2737, through line 6, page 2738.
Line 23, page 2738, through line 1, page 2740.
Line 8, page 2740, through line 15, page 2741.
Lines 11 through 15, page 2742.
Lines 1 through 16, page 2743.
Line 21, page 2743, through line 5, page 2746.
Line 21, page 2746, through line 13, page 2748.
Line 1, page 2749, through line 13, page 2752.
Line 20, page 2752, through page 2755, line 22.
Line 9, page 2756, through line 5, page 2757.
Line 12, page 2758, through line 25, page 2759.
Line 10, page 2760, through line 5, page 2761.
Lines 15 through 22, page 2761.
Lines 3 through 6, page 2762.
Lines 9 and 10, page 2762.
Line 17, page 2762, through line 16 to word "Objection," page 2770.
Line 2, page 2771.
Line 7, page 2771, through line 8, page 2773.
Line 7, page 2774, through line 25, page 2774.
Line 3, page 2775, through line 13, page 2778.
Line 25, page 2778, through line 19, page 2779.
Line 23, page 2779, through line 10, page 2783.
Line 1, page 2784, through line 19, page 2788.
Line 1 through line 4 and add "Objection Sustained,"

page 2789.
Lines 11 through 24, page 2791.
Lines 12 through 14, page 2792.
Line 14, page 2793, through line 2, page 2799.
Line 24, page 2799, through line 25, page 2800.
Line 16, page 2802, through line 6, page 2803
Lines 8 through 22, page 2805.

PROCEEDINGS OF JUNE 22, 1942

Print the following:

June 22, 1942

Line 22, page 2807, through line 3, page 2808.
Lines 6 through 11, page 2808.
Line 20, page 2808, through line 21, page 2809.
Line 25, page 2809, through line 15, page 2810.
Line 21, page 2810, through line 7, page 2811.
Lines 19 through 24, page 2811.
Lines 6 through 11, page 2812.
Lines 3 through 15, page 2813.
Lines 19 through 23, page 2813.
Line 3, page 2814, through line 25, page 2817.
Line 25, page 2820, through line 5, page 2821.
Line 14, page 2821, through line 9, page 2824.
Line 18, page 2824, through line 8, page 2838.
Line 7, page 2839, through word "Objection" on line 25, page 2841.
Line 1, page 2856, through line 25, page 2857.
Line 24, page 2861, through line 25, page 2861.
Lines 18 through 25, page 2862.
Line 10, page 2864, through line 18, page 2865.
Line 3, page 2866, through line 14, page 2866.
Lines 23 and 24, page 2866.
Line 16, page 2867, through line 1, page 2868.
Line 7, page 2869, through line 5, page 2870.
Line 11, page 2870, through line 10, page 2872.

Line 25, page 2872, through line 20, page 2873.
Lines 5 through 19, page 2874.
Lines 7 through 25, page 2875.
Lines 10 through 22, page 2885.
Line 1, page 2888.
Lines 6 through 10, page 2888.
Line 3, page 2889, through line 2, page 2890.
Lines 7, 8 and 9, page 2890.
Lines 2 and 3, page 2891.
Lines 8 through 10, page 2891.
Lines 15 and 16, page 2891.
Line 24, page 2891, through line 4, page 2893.
Lines 4 through 11, page 2894.
Lines 4 through 12, page 2895.
Lines 16 through 22, page 2896.
Lines 10 through 15, page 2897.
Line 22, page 2897, through line 21, page 2900.
Line 1 through line 10, page 2901.
Line 20, page 2901, through line 2, page 2902.
Line 12, page 2909, through line 25, page 2910.
Line 18, page 2911, through line 2, page 2917.
Lines 2 through 8, page 2921.
Line 21, page 2921, through line 25, page 2921.
Line 8, page 2922, through line 19, page 2924.
Line 22, page 2926, through line 3, page 2930.
Line 1, page 2935, through line 22, page 2936.
Lines 1 through 14, page 2937.
Line 12, page 2940, through line 3, page 2941.
Lines 7 through 14, page 2944.
Lines 7 through 22, page 2945.
Line 28, page 2948, through line 4, page 2949.
Lines 15 through 22, page 2949.
Line 3, page 2950, through line 4, page 2951.
Line 14, page 2951, through line 15, page 2952.
Line 2, page 2955, through line 7, page 2956.
Lines 3 through 8, page 2957.
Lines 5 through 7, page 2959.
Lines 15 through 22, page 2959.

Lines 4 through 11, page 2962.
Lines 4 through 8, page 2963.
Lines 13 through 15, page 2963.
Line 19, page 2963, through line 6, page 2964.
Line 12, page 2964, through line 16, page 2965.
Lines 2, page 2966, through line 17, page 2966.

PROCEEDINGS OF JUNE 23, 1942

Print the following:

June 23, 1942

Line 1 through 7, page 2973.
Lines 7 through 15, page 2976.
Line 7, page 2978, through line 7, page 2982.
Line 19, page 2982, through line 16, page 2984.
Line 2, page 2985, through line 18, page 2992.
Lines 4 through 9, page 2997.
Lines 1 through 10, page 3016.
Lines 13 through 17, page 3017.
Line 23, page 3024, through line 4, page 3026.
Line 22, page 3026, through line 8, page 3027.
Line 21, page 3027, through line 10, page 3030.
Line 12, page 3031, through line 8, page 3032.
Lines 5 through 16, page 3056.
Line 2, page 3057, through line 13, page 3059.
Summarize from line 14, page 3059, through line 17, page 3070, as follows:

"Exhibits 84, 5A-MM, 2 A-C, 6 A-C, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 36, 37, 38, 39-A-AA, 40, 41, 42, 80 A-C, 85 A-B, 86 A-C, 87 A-C, 88 A-C, 89, 89-A, 90 were received in evidence. The witness marked on Exhibit 90 the location of the Pottery (by the letter 'P') and the downtown section of Mt. Clemens (by the letter 'X')."

Line 18, page 3070, through line 21, page 3073.

Line 25, page 3073, through line 13, page 3077.
Line 24, page 3077, through line 6, page 3079.
Line 25, page 3079, through line 13, page 3080.
Line 6, page 3081, through line 5, page 3085.
Line 18, page 3085, through line 1, page 3089.
Line 19, page 3089, through line 10, page 3092.

PROCEEDINGS OF JUNE 24, 1942

Print the following:

June 24, 1942

Lines 11 through 13, page 3094.
Line 16, page 3094, through line 21, page 3095.
Line 4, page 3097, through line 12, page 3099.
Lines 5 through 9, page 3100.
Line 20, page 3104, through line 10, page 3106.
Lines 8 through 12, page 3109.
Line 24, page 3112, through line 2, page 3113.
Line 12, page 3116, through line 13, page 3118.
Lines 13 through 19, page 3120.
Line 6, page 3124, through line 4, page 3126.
Lines 4 through 8, page 3127.
Line 4, page 3128, through line 25, page 3128.
Line 2, page 3135, through line 17, page 3136.
Lines 6 through 10, page 3137.
Insert "The Master" and pick up line 5, page 3139 through line 11, page 3141.
Line 19, page 3141, through line 13, page 3143.
Lines 1 through 5, page 3144.
Line 4, page 3145, through line 18, page 3146.
Lines 21 through 24, page 3148.
Line 13, page 3149, through line 4, page 3150.
Line 13, page 3150, through line 4, page 3152.
Line 12, page 3153, through line 10, page 3154.
Line 7, page 3157, through line 6, page 3158.
Line 4, page 3159, through line 2, page 3160.

Lines 15 through 20, page 3161.
Lines 6 through 14, page 3162, and insert "Objection Sustained."
Line 1, page 3167, through line 14, page 3175.
Line 9, page 3176, through line 10, page 3178.
Line 14, page 3181, through line 5, page 3182.
Line 1, page 3183, through line 16, page 3186.
Line 24, page 3187, through line 4, page 3191.
Line 14, page 3191, through line 3, page 3191½.
Line 1, page 3192, through line 10, page 3199.
Line 24, page 3203, through line 2, page 3204.
Line 11, page 3204, through line 6, page 3205.
Lines 17 through 20, page 3205.
Line 3, page 3206, through line 11, page 3210.
Lines 11 through 13, page 3215.
Lines 12 through 17, page 3217.
Line 21, page 3218, through line 9, page 3220.
Line 25, page 3220, through line 20, page 3226.
Line 15, page 3227, through line 11, page 3229.
Line 14, page 3230, through line 7, page 3231.
Line 25, page 3231, through line 5, page 3237.
Line 14, page 3238, through line 20, page 3239.
Line 24, page 3241, through line 18, page 3243.
Lines 1 through 9, page 3244.
Line 23, page 3244, through line 16, page 3250.
Line 18, page 3251, through line 13, page 3254.

PROCEEDINGS OF JUNE 25, 1942

Print the following:

June 25, 1942

Line 4, page 3256, through line 12, page 3258.
Line 22, page 3258, through line 25, page 3259.
Lines 10 through 15, page 3260.
Line 19, page 3261, through line 14, page 3265.
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Line 22, page 3316, through line 25, page 3316.
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PROCEEDINGS OF JUNE 26, 1942

Print the following:

June 26, 1942

Line 11, page 3418, through line 25, page 3418.
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PROCEEDINGS OF APRIL 12, 1943

Print the following:

Hearing on Exceptions to Master's Report, April 12, 1943.

Line 12, page 5, through line 21, page 6.
Line 4, page 7, through line 2, page 8.
Line 12, page 8, through line 15, page 9.
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Line 6, page 29, through line 17, page 30.
Lines 10 through 16, page 35.
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PROCEEDINGS OF JUNE 8, 1943

Print the following:

Hearing on Exceptions to Master's Report, June 8, 1943.

Line 19, page 2, through line 24, page 4.
Line 9, page 11, through line 11, page 15.

Line 16, page 17, through line 13, page 18.
Lines 6 through 20, page 45.
Lines 3 through word "about" on line 9, page 90.
Lines 2 through 23, page 91.
Line 6, page 92, through line 25, page 94.
Lines 9 through 21, page 147.
Lines 18 through 22, page 148.

PROCEEDINGS OF SEPTEMBER 13, 1943

Print the following:

Hearing on Motions for Findings, etc., September 13, 1943.

Line 16, page 6, through line 5, page 7.
Lines 11 through 19, page 8.
Lines 7 through 25, page 10.
Line 1, page 12, through line 25, page 13.
Lines 6 through word "to" on line 10, page 14.
Line 13, page 19, through line 2, page 20.
Lines 14 through 25, page 21.

PROCEEDINGS OF JANUARY 4, 1944

Print the following:

Hearing on Motions to amend findings, etc., January 4, 1944.

Line 5, page 2, through line 5, page 3.
Lines 13 through 17, page 4.
Line 17, page 16, through word "it" on line 11, page 17.
Line 23, page 21, through line 14, page 22.
Line 24, page 23, through line 19, page 24.
Lines 5 through 20, page 29.
Line 15, page 33, through word "that" on line 8, page 35.
Lines 7 through 24, page 37.

PROCEEDINGS OF JUNE 12, 1944.

Print the following:

Hearing on motions for judgment, etc., June 12, 1944.

Line 4, page 2, through line 16, page 5.

III.

Defendant-Appellant hereby designates for inclusion in the printed record on appeal the following exhibits, said exhibits to be reproduced in full, summarized (in form and style hereinafter designated), or omitted from from the printed record, all in accordance with the following designations, viz:

[Appellant's Designation of Exhibits is reproduced in full, infra, as a part of the printed record of exhibits, and to avoid unnecessary duplication, is not reprinted here.]

Albert E. Meder,
Frank E. Cooper,
11th Floor Ford Bldg.,
Detroit, 26 Michigan;
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.,
Mt. Clemens, Michigan;
Beaumont, Smith & Harris,
Of Counsel,
Attorneys for Defendant-Appellant,
By Frank E. Cooper,
One of the Attorneys for Defendant-Appellant.

Sept. 8, 1944.

CONCISE STATEMENT OF POINTS ON WHICH DEFENDANT-APPELLANT MT. CLEMENS POTTERY COMPANY INTENDS TO RELY

(Filed Sept. 8, 1944)

Pursuant to Rule 75(d) of the Federal Rules of Civil Procedure, the defendant-appellant Mt. Clemens Pottery Company, by Beaumont, Smith & Harris, Albert E. Meder, Bert V. Nunneley, and Frank E. Cooper, its attorneys, lists herewith the points on which it intends to rely in connection with its appeal from the judgment rendered herein under date of June 13, 1944, in the above entitled case:

1. The District Court erred in refusing to accept in full the Master's findings of fact and in on the contrary modifying the Master's findings of fact, there having been no showing that the Master's findings were in any respect clearly erroneous.

2. The District Court erred in finding that the plaintiffs or some of them started work before the regular starting time at the beginning of the work day and at the resumption of work after the lunch period, there being no substantial competent evidence to support such finding and the said finding being contrary to the great and overwhelming weight of the evidence and contrary to the findings of the Master.

3. The District Court erred in finding and ruling that in computing plaintiffs' hours of work there should be allowed five minutes for punching the clock plus an additional two minutes to go from the clock to their place

of employment, or a total of seven minutes, before the beginning of work in the morning, and that there should be allowed a total of five minutes at the resumption of work after the lunch period. Such finding and ruling is not supported by any substantial competent evidence and is contrary to law. It disregards the specific findings of the Master and is directly contrary to the clear and overwhelming preponderance of testimony. It constitutes a purely arbitrary formula, not supported by the testimony but based instead on speculation and conjecture.

4. The District Court erred in finding and ruling that in computing the hours of work of plaintiffs as employees of defendant Mt. Clemens Pottery Company there should be included in addition to the hours of work as computed by the Company the following:

(a) In cases where an employee punched his time clock card more than seven minutes before his regular starting time at the beginning of a shift, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded seven minutes before the regular starting time.

(b) In cases where an employee punched his time clock card more than five minutes before his regular starting time after his lunch period, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded five minutes before the regular starting time.

Such finding and ruling is contrary to law. It is not supported by any substantial competent evidence but is contrary to the great and overwhelming preponderance of the testimony, and contrary to the Master's findings of fact, which were not shown to be in any way erroneous. It is based upon mere speculation and conjecture.

5. The District Court erred in ruling that plaintiffs were entitled to recover overtime pay on the basis of the formula set forth in the Court's opinion and finding. Said formula is not based on the testimony of any of the plaintiffs, and is not supported by any evidence in the case. It is on the contrary based on surmise, speculation, and conjecture; and represents at best an estimate (which estimate is unsupported by the evidence) of the amount of overtime which might possibly have been worked by certain employees under specified hypothetical conditions, but which (as shown by undisputed testimony) could not possibly have been worked by many of the plaintiffs under the conditions actually existing, and which was not shown to have been worked by any one of the plaintiffs even during a single work week.

6. The District Court erred in holding that extra compensation voluntarily paid the plaintiffs each year (equal to approximately four per cent of their wages) over and above their agreed wages and overtime, could not be applied by way of set-off in reduction of the amounts of extra compensation found by the Court to be due the plaintiffs, over and above their agreed wages, as extra compensation for overtime; and erred in finding that the extra compensation so paid was a gratuity or gift.

7. The District Court erred in allowing recovery based on a conjectural estimate as to the average amount of overtime which might have been worked, it being uncontradicted that this average as applied to certain employees would result in overpayments, and it not being shown that any employee worked the amount of overtime credited to him under the formula adopted by the District Court.

8. The District Court erred in failing and refusing to find that none of the employees had worked any amount

of overtime for which they were not compensated in accordance with the provisions of the Fair Labor Standards Act.

9. The District Court erred in basing its decision on three charts (Exhibits 97-99) which showed only for three particular days the "ring-in" times of a group of employees (not the plaintiffs) using a particular time clock, and which did not show when the plaintiffs rang in at the time clock on any particular day, and which did not show when any employee started work on any day.

10. The District Court erred in refusing to follow the ruling of the Fifth Circuit Court of Appeals in Tennessee Coal, Iron and Railroad Company v. Muscoda Local, 137 F. 2d 176 (affirmed 321 U. S. 590). As the District Court pointed out in its opinion, if it had followed the decision of the Fifth Circuit Court of Appeals in that case it would have affirmed the Master's report and dismissed plaintiffs' claims. The District Court, however, conceived that the decision of the Fifth Circuit Court of Appeals was incorrect and refused to follow it. In view of this statement by the District Court the decision should be reversed under the decision above noted.

11. The District Court erred in finding that the employees contended that they were required to report for work approximately fourteen minutes before the hour in the morning and that they immediately started productive work. The employees' claim was based on the theory that their hours of work should be computed from the minute they punched the time clock, regardless of when they started work.

12. The District Court erred in finding that when the foremen told the employees that work would start at 6:45 o'clock they likewise mentioned the hour of 6:31, and that

if 7:00 o'clock was the starting time then 6:46 would also be designated in some manner. This finding is not supported by the testimony.

13. The District Court erred in finding that the defendant through its foremen had sought to circumvent the Fair Labor Standards Act, this finding being entirely unsupported by the evidence.

14. The District Court erred in finding that the defendant intended that its "51-52-53" plan should furnish employees a gift equal to or in lieu of a vacation, this finding being in conflict with uncontradicted testimony.

15. The District Court erred in finding that by nine minutes before starting time, 75 per cent of the shift had registered for work. The three exhibits on which the Court relied in so finding referred only to a particular group of employees, and showed as to them that less than 60 per cent of the employees had punched in by nine minutes to seven.

16. The District Court erred in finding that by eight minutes to starting time only a few stragglers were left. The three exhibits on which the Court relied referred only to a particular group of employees, and showed as to them that 30 per cent of the employees there involved had punched in at eight minutes to starting time, or later; and the uncontradicted testimony confirms that many employees punched in subsequent to eight minutes before the starting time.

17. The District Court erred in finding that the time spent in making personal preparations for work (such as putting on overalls, gloves, finger tapes, etc.) wouldn't take more than one or one and a half minutes, such finding not being supported by the evidence.

18. The District Court erred in finding that it would not take more than two minutes to walk from the time clock to the farthest point in the plant. This finding is unsupported by the testimony and contrary to the physical facts.

19. The District Court erred in finding that five minutes was a sufficient space of time for all the employees to punch the time clock in the morning. This finding is contrary to the undisputed testimony.

20. The District Court erred in finding that the plaintiffs' claim to have begun production before the regular starting time. As pointed out in the report of the Master, plaintiffs' claim was that they were "at work" within the meaning of the Fair Labor Standards Act as soon as they punched the time clock, no matter what they did thereafter; and plaintiffs did not generally undertake to testify to the time when production started.

21. The District Court erred in finding that the employees started work more promptly when returning to work after lunch time than when reporting for work in the morning. There is absolutely no support in the record for this finding.

22. The District Court erred in refusing to adopt the proposed findings of fact and conclusions of law submitted by defendant and appellant.

23. The District Court erred in failing and refusing to find specifically that any time spent by employees before the regular starting time in so-called preliminary activities (referred to in the Master's report as including (a) personal preparations such as putting on overalls, greasing arms, etc., and (b) activity of a non-personal nature such as turning on switches, opening windows,

etc.) was counterbalanced by time lost on occasions when the employees started work after the regularly scheduled starting time or quit before the regularly scheduled stopping time, but were credited with having worked from the regular starting time to the regular stopping time. The District Court disregarded the uncontradicted testimony as to the practice of the plaintiffs in quitting work early, and the District Court's conclusion was erroneous in failing to take into account the admitted fact that plaintiffs frequently quit work early.

24. The District Court erred in failing and refusing to dismiss the case for the reason that there was no showing as to when any individual plaintiff started work on any day, and even if the testimony of the plaintiffs could be accepted it would be utterly impossible to form any reasonably accurate estimate of any amount of time worked by plaintiffs, or any of them, before starting time. On the contrary, any estimate that might be made on the basis of the evidence in this record would be purely conjectural and speculative.

25. The District Court erred in failing to dismiss plaintiffs' claim, despite the fact that the Court implicitly affirmed the finding of the Master that if in any instances production work commenced shortly prior to the regularly established starting time it was counterbalanced by occasions when it was started after the hours and by admitted occasions when it was stopped several minutes before quitting time.

26. The District Court erred in failing and refusing to find that approximately eight to ten minutes of the 14-minute period were required to permit the employees to punch through the time-clock, and usually more time was consumed in doing this; that not more than about twenty-five employees per shift punched in at fourteen minutes to the hour; that it took various employees from two to

seven minutes to reach their respective departments after punching in at the time clock, the plant covering more than eight acres.

27. The District Court erred in allowing recovery to plaintiffs under the formula set forth in the Court's opinion, despite the fact that it was uncontradicted and repeatedly emphasized in the Master's report that the punch-in time (i.e., the interval between the moment the time clock was punched and the time work was to begin) of employees on jobs where it was physically impossible to start work before the regular starting time is approximately the same as that of plaintiffs who claim they sometimes started work before the regular starting time.

28. The District Court erred in refusing to dismiss plaintiffs' case despite the admitted fact that although there are and were approximately twelve departments in the plant of The Mt. Clemens Pottery Company, yet the testimony taken at the trial on behalf of the plaintiffs related solely to four departments, viz: Clay Shop, Brushing and Dipping Department, Glost Belt, Decorating Department; and there is no testimony by any of plaintiffs' witnesses referable to any possible claims of any employees other than the eight employees or former employees who testified.

29. The District Court erred in refusing to dismiss the case and in allowing recovery to plaintiffs on the basis of the arbitrary formula set forth in the Court's opinion, despite the fact that no error was shown in (nor did the Court disaffirm) the findings of the Master, to the effect that in the Clay Shop some of the employees worked on the so-called automatic jiggering machines; and these employees could not start work until the machine was started at the regular starting time; and that other Clay Shop employees worked in groups of three, and their work could not begin until the entire group of three were

present. It was usually after the regular starting time before the majority of the Clay Shop employees were at work. If some employees started work a minute or so before the starting time on certain mornings, they started after the regular time or quit work early on at least as many other days. None of the employees in the Clay Shop worked longer hours than are shown on the records of the company as hours worked.

30. The District Court erred in refusing to dismiss the case and in allowing recovery to plaintiffs on the basis of the arbitrary formula set forth in the Court's opinion, despite the fact that no error was shown in (nor did the Court disaffirm) the findings of the Master, to the effect that in the Brushing and Dipping Department, as in the Clay Shop, some of the employees worked in groups of three, and no individual in such a group could begin work until the entire group was fully assembled prior to the regular starting time on any day. Other employees worked on machines which were not turned on until the regular starting time. The clear preponderance of the credible evidence is that work did not begin until the regular starting time or shortly thereafter. None of the employees in this department worked longer hours than are shown on the records of the company as hours worked.

31. The District Court erred in refusing to dismiss the case and in allowing recovery to plaintiffs on the basis of the arbitrary formula set forth in the Court's opinion, despite the fact that no error was shown in (nor did the Court disaffirm) the findings of the Master, to the effect that in the Decorating Department no employees testified that they began work before the regular starting time. The testimony is uncontradicted that employees in this department did not work longer hours than are shown on the records of the company as hours worked.

32. The District Court erred in refusing to dismiss the case and in allowing recovery to plaintiffs on the basis of

the arbitrary formula set forth in the Court's opinion, despite the fact that no error was shown in (nor did the Court disaffirm) the findings of the Master, to the effect that in the Glost Belt Department work could not begin until the belt was turned on; and it could not be operated until practically a full crew was there. The belt was regularly started for production purposes at 7:00 A. M. None of the employees in this department worked longer hours than are indicated by the records of the company as hours worked.

33. The District Court erred in failing and refusing to find that in no department did work start before the regular starting time, even though a few employees had punched in fourteen minutes earlier; and that it was usually after the regular starting time before work actually started.

34. The District Court erred in failing and refusing to dismiss plaintiffs' case on the grounds that even if plaintiffs or any of them did work any amount of time prior to the regular starting time, still any such extra work at the beginning of the day was counterbalanced by the circumstance that in all departments employees frequently took rest periods of their own volition and to suit their own convenience during the day. On the average, employees spent twenty to thirty minutes daily in this manner. During these rest periods of "time out" no work was done, but the time so spent was included by the company as hours worked.

35. The District Court erred in failing and refusing to dismiss plaintiffs' case by reason of the fact that even if plaintiffs or any of them did perform prior to the regular starting time the extra work credited to them under the formula adopted in the Court's opinion, nevertheless as specifically found by the Master (and the Master's finding in this respect was implicitly confirmed by the District Court) employees in all departments frequently

quit work from five to ten minutes before the regular quitting time and did not punch out until after the regular quitting time. The time so lost at the end of the day would have more than counterbalanced any extra time credited to the plaintiffs at the beginning of the day under the Court's formula.

36. The District Court erred in failing and refusing to rule that plaintiffs' acquiescence for many years in the method employed by defendant company in computing their hours of work (which method was fair, reasonable, and well understood by the employees, and which method was identical with that followed for many years by substantially all other plants in this section of the country) estops the plaintiffs from asserting that some other method of computing time should have been employed.

37. The District Court erred in failing and refusing to rule that as a matter of law such activities as are described at p. 25 of the Master's report as "preliminary work" do not constitute a part of the employee's hours of work within the meaning of the Fair Labor Standards Act.

38. The District Court erred in failing and refusing to rule that in construing the meaning of the phrase "hours worked," in an action under the Fair Labor Standards Act, the Court must rely on custom, agreement, and established usage, in such a situation as is here involved.

39. The District Court erred in failing and refusing to rule that "hours worked" include only such time as the employee is actually engaged in the performance of some service in furtherance of the interests of his employer, or is required by the employer to hold himself in readiness for work at an assigned work place, under circumstances in which the employee's time is not his own.

40. The District Court erred in failing and refusing to rule that employees have a right to agree that their hours of work should be computed on a basis which permits them to actually work a full forty hours per week at straight time.

41. The District Court erred in failing and refusing to rule that the only appropriate methods of computing overtime compensation for plaintiffs in accordance with the statutory formula are—(1) payment for overtime at once and one-half their guaranteed regular rate of 30 cents per hour, or (2) payment at once and one-half the regular piece rates for such number of pieces as may be produced during overtime hours.

42. The District Court erred in failing and refusing to hold that in order to have recovered, plaintiffs would have had to prove not only that they worked overtime, but also that the employer suffered or permitted it, and there is no proof of this.

43. The District Court erred in failing and refusing to find that the institution and prosecution of this suit was not conducted in good faith and, on the contrary, constituted an abuse of the Court's process.

44. The District Court erred in ruling that plaintiff Union had the legal capacity under the statutes in such case made and provided, to act as the agent or representative of the employees for the purpose of prosecuting an action under Section 16(b) of the Fair Labor Standards Act.

45. The District Court erred in failing and refusing to find that as a matter of fact plaintiff Union was not properly authorized by its members to prosecute this action on behalf of any employees.

46. The District Court erred in ruling that the allegations in the complaint contained properly set forth the facts required to establish the jurisdiction of the Court.

47. The District Court erred in failing and refusing to confirm the finding of the Master (in which no error was shown) that production work did not regularly commence until the established starting time, and that if in some instances it was commenced shortly prior thereto it was counterbalanced by occasions when it was started after the hour and by admitted occasions when it was stopped several minutes before quitting time.

48. The District Court erred in failing and refusing to dismiss plaintiffs' case by reason of the finding of the Master (which was not challenged and which was not disaffirmed by the Court) that on this record neither the amount of time taken up by preliminary activities within the plant nor the proportion of it spent in advance of the established starting time can be computed for any given employee with any degree of reliability.

49. The District Court erred in adopting a formula for measuring recovery which granted a maximum recovery of eighty minutes extra time during a work week, whereas as found by the Master (and this finding was not disaffirmed nor challenged) under the most liberal estimates of the plaintiffs the extra time worked, if any, could not have aggregated more than thirty minutes per week.

50. The District Court erred in failing and refusing to give any effect to the long established custom and agreement as to computing hours of work.

51. The District Court erred in allowing recovery for certain periods of time even though there was no showing that the plaintiffs were engaged in rendering services during such times.

52. The District Court erred in failing and refusing to hold that there was no testimony as to the amount of extra time, if any, worked by the plaintiffs.

53. The District Court erred in failing and refusing to find that the claims of plaintiffs must be dismissed because such claims as to hours worked were based purely on conjecture and speculation and did not rise to the dignity of evidence nor attain the degree of reasonable certainty required as a basis for any recovery.

54. The District Court erred in failing and refusing to dismiss plaintiffs' case on the grounds that all employees did receive at least once and one-half their regular rate for all overtime worked by them.

55. The District Court erred in failing and refusing to rule that the Fair Labor Standards Act is inapplicable to pieceworkers.

56, It was error for the District Court to reverse the conclusion of the Master without making a detailed finding as to the precise points as to which the Master's specific findings of fact were overruled. The District Court's findings of fact and conclusions of law are stated in vague and most general terms and fail to make clear on what points the Court refuses to accept the Master's findings of fact. The Court's conclusions are inconsistent with many unchallenged findings of the Master which, under the Court's order, stand confirmed.

57. The award of the sum of $2,000.00 as attorneys' fee to plaintiffs' attorney was erroneous, the same being excessive in view of the amount of recovery allowed to plaintiffs, and in view of the fact that the award represented compensation for time spent in connection with claims which were utterly without foundation in fact and which were abandoned by the plaintiffs in the course of the trial, and in view of the fact that the allowance was

made without any testimony to support it and without a hearing.

58. The District Court erred in awarding any fees to plaintiffs' attorney, plaintiffs not having been entitled to recover anything in this suit.

59. The District Court erred in denying the motion to strike filed by defendant and appellant on or about May 12, 1941, and its motion to strike or for further particulars filed on or about November 1, 1941, and its motion to strike or for further particulars filed on or about December 6, 1941.

60. The District Court erred in denying the motion of defendant and appellant to dismiss the complaint for the reason that it failed to state a claim on which relief might be granted.

61. The District Court erred in failing to render judgment against the plaintiffs and assessing costs against the plaintiffs individually and collectively.

Frank E. Cooper,
One of Attorneys for Defendant.
Albert E. Meder,
Frank E. Cooper,
11th Floor, Ford Building,
Detroit 26, Michigan.
Bert V. Nunneley,
Mt. Clemens Savings Bank Building,
Mt. Clemens, Michigan.
Beaumont, Smith & Harris,
Of Counsel,
Attorneys for Defendant-Appellant.

September 8, 1944.

AFFIDAVIT OF SERVICE

(Filed Sept. 12, 1944)

State of Michigan,
County of Wayne—ss.

MARILYN SULLIVAN, of Lincoln Park, Wayne County, Michigan, being first duly sworn, deposes and says that she is employed by Beaumont, Smith & Harris, attorneys at law, and that on the 8th day of September, 1944, she personally served upon Messrs. Edward Lamb and Lowell Goerlich, attorneys for the plaintiffs in the above entitled cause, true copies of the following documents:

A. Notice of Appeal to Circuit Court of Appeals under Rule 73.

B. Designation of record on appeal by defendant-appellant designating the portions of the record, proceedings, evidence, pleadings, orders and exhibits to be contained in the record on appeal.

C. Concise statement of points on which defendant-appellant Mt. Clemens Pottery Company intends to rely.

D. Order dispensing with reproduction of exhibits in printed record,

the originals of said documents being on file in the above entitled cause, and that such service was made by enclosing the said copies in an envelope addressed to Messrs. Edward Lamb and Lowell Goerlich, attorneys at law, 1014 Edison Building, Toledo, Ohio, which envelope being first duly sealed and with proper United States postage pre-

paid was deposited by deponent with the postal authorities in the United States post office in the Penobscot Building, Detroit, Michigan, for mailing as registered mail, return receipt requested, and that attached hereto is the return receipt evidencing delivery of the said copies to the addressees.

Marilyn Sullivan.

Subscribed and sworn to before me this 11th day of September, 1944.

Helen Hogan,
Notary Public, Wayne County, Michigan.
My commission expires October 11, 1946.

TRANSCRIPT OF TESTIMONY

HEARING ON MOTION FOR JUDGMENT BY DEFAULT AND MOTION FOR PARTICULARS, DEC. 15, 1941

Mr. Lamb: We have a motion, your Honor, for judgment under Rule 37 for the failure, because of the failure of the defendants to answer interrogatories that were served on the defendants in April, eight months ago.

The Court: Well, you have been going in and getting information. Don't think the Court is seriously going to do that. I am not going to do it, so you need not argue about it at all.

Mr. Lamb: We, also, in that same motion, have an application, a motion for the appointment of a Special Master.

We have diligently and aggressively examined the records. Every time we filed a motion, or made some attempt to get this information, there are more dilatory motions. The thing has been going on month after month, and we believe the time of the Court, and everyone else would be saved, if the Court, as he suggested last week—your Honor suggested when we were here that unless this information were secured, you were going to send someone over there yourself and obtain it.

The Court: Is this the place that is having the trouble out there right now?

Mr. Lamb: Yes.

The Court: I read in the paper about this strike. Are they working right now?

Mr. Lamb: There are about 500 of them that are not.

The Court: How many are in this plant? One thousand?

Mr. Lamb: One thousand to 1200. We represent 260.

The Court: Have you got all of the information you claim you are entitled to?

Mr. Lamb: We not only have it, your Honor, but we have attached it to a bill of particulars, an amended bill of particulars, to set forth everything your Honor has asked for, and all that we ask for now, is that they answer these interrogatories on file, and answer so that we can proceed to trial.

And, secondly, we believe that all of this would be expedited a great deal if the Court would appoint some person to determine the facts in the case. Also, to determine the amount, if any, that these plaintiffs, these named plaintiffs, are entitled to.

We have several cases. I don't know whether your Honor remembers the issues in this thing, but this company gyps each employee out of approximately 56 minutes of pay a day.

The Court: A day?

Mr. Lamb: A day. Almost $1,000 a day they are taking out of the payroll of these employees. They do it in a very simple way, and we set it forth in our bill of particulars.

There are several ways they do it, but the primary thing that is the essence of this suit is that an employee will report and go to work at 6:46 in the morning. The company will pay them from 7 o'clock. They will report out at lunch at 12:15; the company will only pay them to 12 o'clock. They report back from lunch at 12:46, and the company will only pay them from one o'clock, and so forth, four times a day, for every single employee in there.

We have set forth all of that information in our bill of particulars, and the amendment to the bill of particulars, as well as the other things which the company is doing, which gives us the claim under the Fair Labor Standards Act of 1936.

This company even deducts from the employees' wages the cost of carriages that haul pottery back and forth between departments. They deduct maintenance charges, and all these things that are unauthorized in proper deductions. The thing is they take 56 minutes a day from every employee down there.

The general attorney of the Wages and Hours Division of the United States is here. I don't think there is any argument about the necessity of a company paying an employee for the time worked on its premises. * * *

The whole essence of this thing grows out of this cheating of the company, taking from the time cards of these employees 56 minutes every single day in the year.

The Court: All right. What has the company got to say on that? First, what are the interrogatories that you insist be answered? * * *

Mr. Cooper: May I say, first, your Honor, that this is not the court in which to try out the strike issues. Mr. Lamb has made a number of statements on the record—

The Court: (Interposing) What is your position about this?

Mr. Cooper: Interrogatories?

The Court: As I understand it, these men come in 14 minutes to 7, and they punch the clock at that time, and then they don't go to work until,—or, they go to work right away.

Mr. Lamb: They go to work immediately.

The Court: But, they get paid from 7 to 12. Now, does the company deny that?

Mr. Cooper: We do, your Honor, most emphatically.

The Court: Then why isn't it a question of fact to find out on that?

Mr. Cooper: That is exactly a question of fact that will be presented on the trial.

The Court: You made a motion the other day. I am getting sick and tired of you people playing with the Court. I will tell you what I am going to do again; I have been here long enough to know that neither side is entirely without fault. That is, perhaps the one side

aggravates, and, perhaps one is more at fault with the other, but isn't that the only issue? And, why shouldn't I refer this to a Master and let him get going and get the information, and then I will decide the question of law involved. Isn't that the only thing? . . .

The Court: All right, gentlemen. Start your second point over again. As to the first point, I think there is no more that need be said about that.

Mr. Cooper: Yes, your Honor. May I make one suggestion before stating the second point, your Honor?

The Court: All right.

Mr. Cooper: Let us assume one of the plaintiffs, you can pick anyone, is a young fellow; he lives about ten miles out of town; he drives in to work every morning in an old 1934 Ford, with four or five other people that live in the same part of the country, and work with him; and they leave home pretty early, and work is supposed to start at 7 o'clock. Sometimes they start work late, but sometimes they get into Mount Clemens a little bit before seven. That situation was such that long ago, and long before they had this suit, in order to prevent the people from getting in too early to Mount Clemens, they were going to prevent people from getting in early and punching their time clock. They punched the time clock before a quarter to seven. The result is you find these people walking in there punching the clock four or five minutes to seven; sometimes even after seven; no one before 14 minutes to seven, because the doors aren't open before that.

They don't go over and begin work as soon as they punch their time clock; they go to their locker, and take off their street clothes, and put on their working clothes, and work starts at seven o'clock.

That is going to be our answer, and our view of the testimony here. . . .

The Court: How many of these time clocks have you got?

Mr. Cooper: I can't say that offhand. I have seen three or four.

The Court: Let us say they have four. That is about 300 employees.

Mr. Lamb: 1200.

The Court: To each time clock. Four of them would be 300 to a time clock. How long would it take those people to punch a clock? . . .

Mr. Cooper: I would say about 50 can punch in on one time clock in about a minute.

The Court: So that five minutes, so far as the punching is concerned, would be enough to let them get in there and go to their place; isn't that true?

Mr. Cooper: If it were a question—I don't know the fact, your Honor. I think I better answer that factually.

The Court: That is a question right there of common sense. Five minutes for punching the clock. Now, mind you, I am not talking about changing their clothes, or anything else. . . .

The Court: All right. Now, they quit at 12 o'clock—they quit at 12:14, but they claim that your clocks show them to be quitting at 12 o'clock when, as a matter of fact, they quit at 12:14.

Now, the same reason about coming in an automobile, and picking other people up, and getting there early, can't apply. What is the reason advanced by the company for that? Or, do you deny that that takes place?

Mr. Cooper: We deny that that takes place, your Honor. . . .

The original complaint, as stated in the language approximately that your Honor has just used, as I understand it, it is actually 12:14 when Mr. Jones comes out here and punches out his time clock, and that by some manipulation the clock stamps 12 on the card, although it is actually 12:14. Is that your Honor's understanding?

The Court: I don't know what they claim. What do you claim, that the clock automatically at 12:14 registers 12 o'clock? Or, that the clock registers properly, but that when they compute the time, they nick them off 14 minutes?

Mr. Lamb: That is right. We claim two things; first,

that they nick them off—the time clock is accurately stamped, the time is stamped on the time card as 12:14; they only pay them, as will be shown in many, many cases in our bill of particulars, and it is true in every case of every employee of The Mount Clemens Pottery Company, they only pay them for 12 o'clock. . . .

Mr. Cooper: In that connection, may I say this, your Honor; I understand now, as I understood November 10th, that the particular paragraph in the original complaint which your Honor and counsel for the plaintiff have just been discussing, which puts it in the phraseology of the time clock punching the wrong time, is now put to one side.

The Court: It is eliminated. If it is in there that the clock punches the wrong time, as I understand it, they don't claim that. I certainly am not going to start fixing the clocks. You can make that a question of evidence, if you want to.

You admit the clock punches the right time.

Mr. Lamb: That is right.

The Court: But, they compute it the wrong way.

Mr. Lamb: Yes, sir, your Honor.

The Court: All right.

Mr. Cooper: I think I may now just state without any elaboration, your Honor, in view of the colloquy, the second point I raised in my motion for particulars.

The Court: All right.

Mr. Cooper: It is said that all of the employees represented in this action worked longer hours than are shown on the time cards. It is conceded, though, now, as I think it would appear on an examination of the cards, that the cards punch the actual moment that the man sticks his card into the clock.

The Court: I guess there is no doubt of that. I mean, they don't dispute that. . . .

Mr. Cooper: That claim I well understand. This second point, your Honor, is that the amended bill of particulars states that all the claimants worked longer hours than are shown on the clock cards.

The Court: Do they say on the clock cards or on the computation?

Mr. Cooper: On the time cards.

Mr. Lamb: We have said time cards and computation. The reason for that is this, your Honor, when we asked for more particulars we first filed a bill of particulars, and in our amended bill of particulars we set forth many cards showing this exact method of computation. We also show eight different grounds of just how this computation is arrived at, that there have been erroneous keeping of the cards.

Item "F" of our amended bill of particulars outlines, for instance, how the foreman took time cards at 12:29—the foreman did this; the men swore they did not do that—the foreman took the time cards and went out and punched them at 12:29, and punched them back at 12:31 gypping the men out of a half-hour's work right there, because they only pay for the preceding quarter of an hour. They gypped them out of that quarter of an hour, and the men didn't leave the plant.

The Court: That becomes a question of fact, does it not?

Mr. Lamb: That is right, but that shows how a time card, our time cards, have not been accurately kept.

The Court: All right.

Mr. Cooper: Now, as to my second point, your Honor, I want to know whether it is now stated on the record that this statement in the amendment to the Bill of Particulars that all the employees represented worked—they claim they worked longer hours than are shown on the time cards, does not mean what to me it seems to mean; whether it does not mean that if he punched in at 9:51, or 7:10, as this next one did, that they actually started before that.

The Court: Do you stick to that, that all these men worked longer hours than the time cards show?

Mr. Lamb: We are in this position, your Honor. They asked for full information; how we arrive at this claim and so forth. In the amendment to the Bill of Particu-

lars we did outline the various ways as clearly and as positively as we humanly could.

The Court: That has nothing to do with it. Here the time cards show 9 hours and 21 minutes, but they only credit the men with 8 hours and 45 minutes.

Mr. Lamb: Yes.

The Court: That is one classification.

Mr. Lamb: Yes.

The Court: And that becomes a question of fact.

Mr. Lamb: That is right.

The Court: And then a question of law, perhaps, on whether they are justified in having them come in earlier in the morning so that they can get ready.

Mr. Lamb: Yes.

The Court: I can understand that. I can understand the morning. Now, do you also claim that some of the men, for example, worked 9 hours and were only—the time card only shows 8 hours and 30 minutes.

Mr. Lamb: Yes.

The Court: That applies to all of them?

Mr. Lamb: Well, we can't say, your Honor. I have examined the time cards— . . .

The Court: Just give that. Now, that is—

Mr. Lamb (Interposing): List of persons?

The Court: More hours worked than shown on card. If you claim that for everybody—you ought to have some of them who claim that, I am sure. They must have a fine bunch of foremen out there.

Mr. Lamb: They do have a fine bunch of foremen out there.

The Court: I will have to be shown that. I can't believe a man, who is a working man and works himself, would so far forget himself as to do a thing like that.

Mr. Lamb: Your Honor, I challenge anyone to show a company that does this same thing. There is no other company in the United States that we have been able to find that gyps their employees like this one does.

The Court: All right. When a foreman takes a man's

card out, and lets him work a half-hour, this Court is going to do a little punching of its own, if that is true. I don't know. I can't believe that. It might happen in one or two instances.

Mr. Lamb: It has happened in whole departments, your Honor. I have the departments and when those things occurred in the bill of particulars.

The Court: It is up to you to prove it. That is a matter of proof.

What is the third one?

Mr. Cooper: Your Honor, I presume it is unnecessary for me to prevent undue suspicion being created against my client—

The Court (Interposing): Listen, I have been here before. In other words, I am not to believe everything he says. That is right, isn't it? I am not to believe everything he says about your client?

Mr. Cooper: I would prefer that your Honor did not until my side is heard.

The Court: Well, I won't. All right, what is the next one.

Mr. Cooper: The third one fits into a very similar category; they are particular claims which, by the way, are advanced for the first time in the amendment to the Bill of Particulars. They claim that certain individuals performed what is called uncompensated tasks. Take a man making cups, say, I suppose at a piecework basis, and at the end of the day he cleans up the machinery, or cleans up the room, and we ask in the third place for particulars as to those two or three new classes of claims.

The Court: You want to know who he claims worked overtime or worked beyond any way of reckoning, for doing such kind of labor as is not compensated for?

Mr. Cooper: Yes, your Honor.

Mr. Lamb: We have set that forth in Item "I" of our bill of particulars.

The Court: That takes care of that.

Mr. Lamb: Yes.

The Court: What does it say?

(Mr. Lamb thereupon read Item F, above-referred to.)

Mr. Lamb: What we are doing, they have asked us how these things occurred, and we have stated the following are typical of what has occurred.

The Court: What else do you want besides that?

Mr. Lamb: We couldn't furnish that information. They have the record.

The Court: What else do you want from them on that?

Mr. Cooper: The list of individuals as to whom they claim that occurred.

The Court: I don't know. If that occurred in one case, and they prove it in one case, then I think I could find out in how many cases, because the danger of giving you the list of that, they may miss out on somebody, and those people wouldn't be taken care of, and this after all is a class suit, isn't it?

Mr. Lamb: Yes, your Honor.

The Court: I think they have told you about it. I am going to find out about this. If this company is doing that out there they ought to receive little consideration. On the other hand, if the Union is coming in here with a faked statement, they ought to take what is coming to them, too, and they will get it in this court if they are unable to substantiate these things.

Mr. Cooper: That leaves me only one remaining point, your Honor. It is a little more difficult to state. It comes down to about this. That the amendment to the bill of particulars, and, as I say, this simply appears to me not to particularize, but rather to further muddy the waters—it contains a number of things which simply mis-state, do not correctly state the records on which it is based.

Must for example, on page 9 of the amendment to the Bill of Particulars it alleges that a certain group of cards shows that they were all punched uniformly at a certain hour in the morning, and punched out at a certain hour

at noon, and I have them along. They certainly show almost as complete a difference as one could imagine; different hours, different days and different employees.

The Court: Do they enumerate what employees they are that did that?

Mr. Cooper: Not by names, your Honor. It says by clock cards. As to the clock cards, it says numbers 941 through 956.

The Court: I see. And that does show they were punched in at different times.

Mr. Cooper: Yes, your Honor.

The Court: Is it possible on those clocks to punch, oh, 10, 50 or 100 at one time?

Mr. Cooper: No, your Honor. There is only one little slot for one at a time.

The Court: As I understand, you stand in line and punch one at a time.

Mr. Cooper: Precisely.

The Court: What do they claim for that? Supposing that is true, what do they claim for it in their bill?

Mr. Cooper: Their bill doesn't make that clear.

The Court: What do you claim for that?

Mr. Lamb: On the basis men were not paid, that the cards are not an accurate computation of the time.

The Court: That all goes to one, two, or three.

Mr. Lamb: It is all a question of proof.

The Court: I mean, here are three things, as I understand it, that you are going to try to prove; first, that they are getting paid for less time than the cards themselves show they are entitled to.

Mr. Lamb: Yes, your Honor.

The Court: Now there you said you have given them all the information you can on that. That becomes a question of fact, and later on may become a question of law if you are right on that.

Second, that some of the cards do not show the exact number of hours worked; that more hours were worked than is shown on the cards themselves.

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The Court: You can put on there that the Court has ordered the plaintiff on the second point—no, in answer to the second point, the plaintiff says that the persons that he has reference to are all those who are named plaintiffs. Is that right?

Mr. Lamb: Yes, your Honor.

The Court: No more, no less. If anybody else wants to get in on it, that is his business. That settles that.

Mr. Cooper: Do I understand that correctly, your Honor, that every person named as plaintiffs claims he worked longer hours than would be computed on the basis or on the clock-card system?

The Court: That is what he says. I don't think they can prove that, but in order to make sure that is what he is saying, and that is what I would do if I were in his shoes, and that is what you would do if you were doing the same thing.

Mr. Cooper: Well, we are not to have any statement at all as to how much extra time they claimed?

The Court: You can get that on the proof. How can they tell? You can't pin them down to something where all the facts are entirely within your possession.

I am looking not so much as to whether they show the right person, or right hour, or this, and that, or the other thing; I am looking at justice. What did they do? If this company did wrong, they should pay for it. If they didn't, this bunch of workmen that are bringing this action, they should pay for it.

I am not going to dilly dally here to find out if they have the right proof in. That is a matter of proof. It may be varied as it comes into court. There is no reason, gentlemen, why you cannot get that information. . . .

The Court (Interposing): Here is the claim, as I understand it. There may be variances of this, but this is a typical case.

A man went to work at one o'clock in the afternoon, for example, and they gave his card, or his card was taken up by his foreman, or somebody else, and at one-thirty

they went out and punched his clock, and instead of showing that he went to work at one o'clock it appears that he went to work at one-thirty. Isn't that what you claim?

Mr. Lamb: That is right.

The Court: There isn't any question in my mind what they are claiming. I don't say they can prove it, but I mean what they are claiming; is that plain?

Mr. Cooper: Extremely plain as to a specific case. As I understand the claim, your Honor, though, they don't claim that that would be the way in which any extra time might have occurred in each case. On a claim as broad as that it is obvious that anything at all can be proved, and in order that we may proper prepare for trial and know just what the issues are, I think we should have a—

The Court (Interposing): I don't think that is true. You aren't going to fool the court. Here is what they claim you did. If you did not do it, you won't be in any trouble at all. If you did do it, it is a question of fact.

The Court: I think he stated it as particularly as he possibly can under the circumstances. It is more particular than when he came in here. There isn't any doubt about that.

Mr. Cooper: That is true.

The Court: Now, you know what he claims, and he has given you the names of the fellows to whom it relates. What else can you want? What else can you sensibly want?

Of course, if you want to say, "I don't understand it yet," regardless of whether you should understand it or not, why, I just can't help that, except that I can rule.

Now, I give you ten days in which to get in that answer. If you haven't got your answer in in ten days, and these people want to take a default, I am going to let them take a default, but this case is going to move. It is going to move, now, I will tell you. . . .

The Court: Now, gentlemen, I have seen too much. Sometimes it is the Union that comes in and they file a lot of technical things, and other times it is the company.

I don't know who is right here. I don't know who is right here and, perhaps, this whole thing will clear up when you get in court and find out it is a mistake.

I can see how that first fourteen minutes or so could be accounted for. I can understand that, or a good share of that first fourteen minutes. But, I certainly can't understand how the time clock shows that they quit at 4:14, and they only get paid up to 4 o'clock. I can't see that. Could you, if that is true? . . .

ARGUMENTS ON MOTION OF PLAINTIFFS FOR SUMMARY JUDGMENT, JAN. 26, 1942.

Mr. Lamb: If your Honor please, in accordance with an order entered by your Honor in December, the defendant Mt. Clemens Pottery Company was required to and did file an answer on January 5th. In this answer the company admits that it does not pay employees for the time as shown on the time clock cards kept by the company in accordance with the Wage and Hour Act itself.

We have filed a motion for summary judgment on the simple proposition that there is no bona fide issue of fact, but the simple question of law presented as to whether or not this defendant is required to pay the employees in accordance with the time records which the companies are required to keep under the Wage and Hour Act.

The Court: Specifically, what does that time amount to?

Mr. Lamb: It amounts to considerable.

The Court: I don't mean in dollars and cents, but in hours.

Mr. Lamb: 56 minutes every day for each employee.

The Court: Give me that over again how you figured that out.

Mr. Lamb: The employees report at 6:46 A. M. They are required to do that. If they should report five minutes after 6:46, they are sent home.

The Court: Is that admitted. Do they admit that?

Mr. Cooper: No, sir.

Mr. Lamb: No, I wouldn't say the admission is about their sending them home. I have witnesses here who will prove that. They do admit that they do not pay from 6:46 A. M., as shown on the time clock card, but they only pay from 7 A. M.

The Court: How long does it take them to all check in on the time clock?

Mr. Lamb: The time varies a minute or two, but from the time when the time clock is punched to the time that they actually work is infinitesimal, possibly a minute. We have affidavits and witnesses here, incidentally, to back up the affidavits.

The Court: Now, suppose I am to start at 11 o'clock.

Mr. Lamb: Yes.

The Court: How many employees do they have?

Mr. Lamb: About a thousand.

The Court: How many time clocks?

Mr. Lamb: Well, we contend that there are around four, but they claim that there have been more.

The Court: Who is "they"?

Mr. Lamb: That is, the defendants.

The Court: Suppose we say four. Suppose they line them up at four different time clocks.

Mr. Lamb: Yes.

The Court: How long would that take them to check them in?

Mr. Lamb: About a minute or two. They check in by departments. You see, irrespective whether they are checked in at 6:46, 6:47, or 6:48—

The Court: I am looking at it from a different viewpoint. At least, they are supposed to start at 7 o'clock?

Mr. Lamb: No, they are supposed to start at 6:46.

The Court: You can't start the minute you get there.

Mr. Lamb: They start a minute after.

The Court: If it is one-sixtieth of a minute, the principle is the same.

Mr. Lamb: That is right.

The Court: What time are they supposed to start work?

Mr. Lamb: They start work immediately on the time that they punch the time clocks.

The Court: All right, I will start over again. What time are they supposed to start work?

Mr. Lamb: 6:46.

The Court: Well, didn't you tell me the other day that they were supposed to start work at 7 o'clock?

Mr. Lamb: No.

The Court: But they got there at 6:46?

Mr. Lamb: They start to work immediately upon arrival at the plant, your Honor.

The Court: Now, suppose I got in there at 6:46 and punched the clock.

Mr. Lamb: That is right.

The Court: And I sat around, walked over to my machine and sat down; put on overalls, which took me, let's say, five minutes. Well, let's say the whole thing took me four minutes, so I am at the machine, then, ten minutes to 7. And say that everybody is right; they start at 7 o'clock. Suppose a fellow did that. Would he be fired for not working during that time?

Mr. Lamb: Yes, sir. We have people in the courtroom who have been sent home for that very reason.

The Court: That is just what I want to know.

Mr. Lamb: Yes, sir.

The Court: I recognize this. If I was running a factory and they started at 7 o'clock, I would expect them to get there a little ahead of time.

Mr. Lamb: These people are on piece-work, your Honor, so that when they come to their bench, they not only have the personal incentive to turn out production, but they also have their foreman, for instance Harms, who signs an affidavit that if they don't start to work—

where there are one thousand employees, your Honor, we know they are not going to allow anyone to sit around.

But here they report at 6:46, and it may take them a minute, they mix their glosses and they start in production, and they are paid by piecework.

Now, the Wages and Hour Law and the decisions are uniform in holding that the records must be kept, showing the time record. Now, the answer of the defendant says, well, even though they report it there, most of these people were on piecework so it doesn't make any substantial difference.

But this is where it makes a substantial difference. When these people report at 6:46 and go into production, the Wage and Hour Law, of course, requires them to be paid for their production and the time that they spend, and whether it is on piecework or straight time or any other method of computation, they must be paid time and a half after their forty hours of work, or their piecework plus bonus plus straight time.

The Court: How much does it amount to?

Mr. Lamb: 56 minutes a day.

The Court: There is 14 minutes right there.

Mr. Lamb: Then they will work until 12:14.

The Court: They will actually work from 7 until 12:14?

Mr. Lamb: 6:46 until 12:14.

The Court: I am talking about the time clock. To 12:14?

Mr. Lamb: Yes, sir.

The Court: What do they get credit for.

Mr. Lamb: 12 o'clock.

The Court: There is 14 minutes more there.

Mr. Lamb: That is right. Then they come back at 12:46.

The Court: 12:46.

Mr. Lamb: From lunch. And they are paid from 1 o'clock.

The Court: Then what?

Mr. Lamb: The company pays them only from 1 o'clock.

The Court: That is 14 minutes more. All right.

Mr. Lamb: Then they will work until 4:14 and they will be paid only until 4 o'clock.

The Court: On that, you claim you are entitled to a summary judgment?

Mr. Lamb: Because they admit they are not paying them on the time clock records, and Judge Raymond has decided where an employee is in or about the premises, subject to employers' directions, he must be paid. We have cited other cases in our brief. For instance, the Sunshine Mining case, where the rule is from portal to portal, the employee must be paid the time spent from portal to portal.

The Court: What is your position on that, gentlemen?

Mr. Cooper: Your Honor, I would like to make two points, first with reference to Mr. Lamb's discussion.

His motion, as I understand it, is based on the proposition that the court may rule as a matter of law that the man is at work from the moment he punches a time clock, and continues at work until the minute he punches the time clock out. I think that the question as to whether or not an employee does begin working when he punches the time clock is in every case a question of fact.

The Court: Do you claim it takes them fourteen minutes after he punches the time clock, to get started at work?

Mr. Cooper: I don't claim that it would require 14 minutes, your Honor. I claim, though, that an occasional employee who punches in 14 minutes to 7—and let me remind your Honor, as indicated by the bills of particulars, there are very few employees who will punch in at 14 minutes to 7.

The Court: Suppose 13 minutes. Let's look at it in a practical way. I worked in a factory, so I know. I know how much time it takes you to get to these places. Of course, I don't know this particular factory, except I

have been reading in the paper about a lot of trouble out there.

But here is 14 minutes. A fellow gets there at 6:46. You say he starts at 7. Now, he quits at 12:14, and they only pay him from 7 to 12. What possible excuse can there be for this company doing that, under any law? I can take judicial notice of the fact that it doesn't take 14 minutes to leave that place. Then, besides, he actually works until 12:14, doesn't he?

Mr. Cooper: No. He doesn't your Honor. That is precisely the point.

The Court: Well, let's get at that. Here is a question of fact coming up. Does he actually work until 12:14?

Mr. Lamb: Of course. We have the affidavits from the people themselves.

The Court: Do they admit that in their pleadings?

Mr. Lamb: They only pay them to 12; and they work until 12:14.

The Court: But they say they only work until 12.

Mr. Lamb: They work until 12:14.

The Court: That presents a question of fact. You told me they admitted that. They deny he works until 12:14.

Mr. Lamb: They do admit it, your Honor. They admit they haven't paid them according to the time clock records.

The Court: Let's see what they say on that, because if that is supported, there is only a question of law and the amount to be figured up.

If this were two or three minutes getting to and from work, I would say the workers were going out of their way looking for trouble, or looking for extra money. But to say that it takes a man 14 minutes to get to his work and 14 minutes back, 56 minutes a day, that certainly is an attempt to circumvent the law, if that is true.

Mr. Lamb: Your Honor, may I point out that there are even cases where the company has followed this policy of checking a man out at 12:29 and checking his clock, punching it—

The Court (Interposing): Give me that where they haven't paid according to the time.

Mr. Lamb: Page 7 of their answer, they state:

> "This defendant further shows that where an employee punches the time clock before starting work or after quitting work, this defendant does not compensate such employee for periods he was in the plant but not working prior to the start of work or subsequent to the close of work."

The Court: Give me that again, "but not working."

Mr. Lamb (Reading):

> "—does not compensate such employee for periods he was in the plant but not working prior to the start of work or subsequent to the close of work."

The Court: "In the plant but not working." Read that again.

Mr. Lamb (Reading):

> "This defendant further shows that where an employee punches the time clock before starting work or after quitting work, this defendant does not compensate such employee for periods he was in the plant but not working prior to the start of work or subsequent to the close of work."

It is a simple question of whether or not he must pay while he is on the company's premises in the company's employment, according to the records which the company keeps.

The Court: You say it has been determined they have got to keep a record of the time he works?

Mr. Lamb: That is right.

The Court: And they haven't done that here?

Mr. Lamb: We say they have. It is the only record they have got of the time he works. We have the affidavits to show the employees worked from that time shown by the time clock.

The Court: Have they got affidavits to the contrary?

Mr. Cooper: Yes, your Honor.

Mr. Lamb: How could they have an affidavit that this employee, Steve Anderson or Lillian Socia, who say they went directly to work and worked in accordance with the time clock cards of the company—

The Court (Interposing): That becomes a question of fact later on.

Mr. Lamb: They can't make a bona fide issue of fact when the records they kept themselves say they did work, and somebody says they didn't work.

The Court: That is a question of fact to be determined. I can't give you a summary judgment on that, even though I may know down in my heart that they did just exactly what you claim they did.

I can't understand this company out there. Some of these people have never cooperated at all with this Wages and Hours Law, and they haven't been able to see what is going on in this country.

But I don't say that they have done it here, except it shouldn't take 56 minutes for a man to get in and out of that place.

Mr. Lamb: It doesn't.

Mr. Nunneley: It doesn't. That isn't a fact. My brother has produced the maximum time.

Now, if the Court please—

The Court: Do you claim that these people don't have to get there at 14 minutes to 7?

Mr. Nunneley: Correct.

The Court: You claim they do not?

Mr. Nunneley: They do not.

The Court: And you claim they are paid only for the work that they actually do?

Mr. Nunneley: That is right. We pay for what they do. They have established starting times.

The Court: 7 o'clock.

Mr. Nunneley: 7 o'clock, let us say. There are various ones in various departments.

The Court: How about quitting at 12:14?

Mr. Nunneley: The quitting is exactly the same thing. They quit at 12 o'clock. They have that long to get out

of there. Maybe they hang around. Those cards will show not always 14 minutes. They show all kinds of times between 12 o'clock and 14 after.

And the same thing coming in in the morning. They are supposed to be ready to go to work at 7 o'clock. Some of those people live out twelve, fourteen miles.

They don't even open the gate until 14 minutes to 7 o'clock. Some of them come in at that time. Some other fellow comes at 10 minutes to 7, somebody comes at 7 o'clock. Those cards show all kinds of variations.

The Court: He says any time they come there five minutes late, they send them home.

Mr. Nunneley: We deny that.

The Court: I am going to deny the motion for summary judgment and refer this matter to take evidence immediately before a Master so that you can come back with everybody's case in detail.

And I am telling you this, if they have worked people ten or fifteen minutes more and didn't pay them, they will have to pay overtime. They aren't going to get around the law by any subterfuge. If they are, I don't say they are. But I can't, with a question of fact raised before me, I can't give a summary judgment.

They deny these things. Therefore it must be heard. I will refer the matter to a Master, and when can you gentlemen take it up with him?

HEARINGS BEFORE SPECIAL MASTER, FEB. 9, 1942

* * *

Mr. Cooper: Before describing our position as set forth in our answer, and in answer to plaintiff's opening statement this morning, I would like to put on the record two or three motions.

First, a motion to dismiss the complaint, which is attached to our answer and noticed for the opening of the

hearing. It has not yet been before the court. That motion depends on three grounds.

First of all, that, in the language of the bill, it does not set forth a claim on which relief may be granted. More particularly, that the claim does not properly set forth that the employees represented or claimed to be represented in this action are subject to the provisions of the so-called Wage and Hour Law. • • •

The second ground of our motion to dismiss is that neither the complaint nor the bills of particulars so-called, which have been filed, set forth what violations of the act are claimed as to each plaintiff. We have, as appears I think sufficiently from the file, endeavored time and again to ascertain what is claimed as to each individual plaintiff, both in terms of the amount of money which he claims is due to him and the particular violations of the law which he claims have been committed with respect to him, and the weeks in which he claimed such violations occurred. • • •

The third ground of this first motion to dismiss the complaint will be our position that the provisions of 6 and 7 of the Act have no application to the employment of these plaintiffs. • • •

The second motion which I would like to make is to dismiss the complaint as a class action. We are moving that the complaint and this action be limited to the named individual plaintiffs and to such further individuals as may, in accordance with the method provided by the rules, make themselves parties by intervention. This motion, of course, was denied without prejudice, specifically without prejudice in Judge Picard's opinion of Jannary 13. There is already in the files a brief fully stating our position in the matter and citing the authorities on which we relied. I think a reference to that would be sufficient for our present purposes.

Essentially, it is our position in that regard that we do not have here a class action in which the same or similar claims are made on behalf of a large group of in-

dividuals, but that we have here—and this, I think, will develop as the evidence comes in—different claims of different natures as to different plaintiffs, and we really have some 250 or 260 separate little suits.

This second motion to dismiss the complaint as a class action is also, of course, based upon the proposition—authorities for this being likewise cited in the brief I mentioned—that while under Section 16-B of the Wage and Hour Law an individual may designate another individual as his representative for purposes of starting a class suit, they may not designate two agents, nor a corporate agent, nor a voluntary association as an agent.

In the third place among the motions I would like to renew is a motion to strike I made on May 26, likewise denied without prejudice, and to renew finally our subsequent motions for particulars. * * *

The Master: As to these motions, I don't think I want to hear elaborate reply to them. These motions are motions that, I presume, are made to protect the record. Most of them have been up before the Court before, and have been denied—at least denied without prejudice, and I will just make a general blanket denial of all of them, without—that is, the motion to dismiss the bill of complaint, and to strike, and for further particulars—dismiss them without prejudice to their renewal, and without having investigated the merits of them at all. In some of these it may be they have been denied by the Court previously with prejudice. I don't know.

Mr. Cooper: If your Honor please, I think the first motion, the motion to dismiss the complaint, has not as yet been before the Court. That motion was annexed to our answer.

The Master: It may not have been directly before the Court, or brought up before Judge Picard, but Judge Picard has entered an order of reference to this case to me with the direction that the testimony be taken and the findings of fact and conclusions of law of the Master be reported to the Court, and if I am going to consider a

of the complaint on the basis of
ade, that hasn't been before the
onsistent with the order that has
to go ahead with the proofs.
ght that, perhaps, your Honor
a motion under advisement, so
f all of this, when your Honor
t, and conclusions of law, such
might desire to give to those

sing): I intended my ruling to
ps I better state with respect to
will go ahead with the trial, and
isement. It can be urged at the
th the same effect as if it had
we will take the testimony, and
ony and law in relation to these

• • •

was thereupon produced as a
the Plaintiffs, and, after having
testified as follows:

Examination

lress?
ay, Mount Clemens, Michigan.
st go to work for The Mount
y?
years ago.
you remain, or have you re-

t the 23rd.
d up to about October 23, 1941?

Q. Is that right?
A. Yes.
Q. What department are you associated with?
A. The Dipping Department.
Q. Of the Mount Clemens Pottery Company?
A. Yes, sir.
Q. And are you associated with a trade union?
A. Yes.
Q. What?
A. United Pottery Workers, CIO.
Q. In what capacity do you serve in the United Pottery Workers?
A. Chairman.
Q. You are also president or chairman of the local?
A. Yes.
Q. Of this union. Is that Local 1083, United Pottery Workers?
A. Yes.
Q. An unincorporated trade association, affiliated with the Congress of Industrial Organizations?
A. Yes, sir.
Q. Will you tell us what department you are in.
A. Dipping Department, yes.
Q. Was that so ever since you began work some ten years ago?
A. Well, I worked about three months in, I don't know what department, I believe it is the sagger room.
Q. What year was that?
A. That is when I first started.
Q. That was some time prior to 1938, then?
A. Yes.
Mr. Lamb: May we have the cards of Mr. Anderson?
Q. (By Mr. Lamb): Mr. Anderson, I hand you herewith cards which have been marked Exhibits 1 to 1-Z, then 1-AA to 1-FF.
Q. (By Mr. Lamb): Will you kindly tell us what those are?
A. Those are our time cards that we punch in and punch out.

Q. And at the top thereof, you notice certain numbers, for instance, the week ending December 31, 1940, the number 759.

Can you tell us what that is?

A. That was my time clock number.

Q. The time clock number varies somewhat, does it not, over a period of years?

A. Yes.

Q. At least there have been certain changes?

A. Yes.

Q. All right. I would like now to refer to Exhibit 2 and have you advise us what those are?

A. That is the first time I ever seen that. I imagine it is my rates, isn't it?

Q. These are your individual earnings records?

Mr. Nunneley: We object to counsel telling him what they are, if he doesn't know.

The Master: If he has never seen them before—

Q. (By Mr. Lamb): It might be well for us to look at them, for you to look at them and advise us in your own words, what they appear to be (handing cards to the witness)?

A. This is a record of my earnings, I guess; that is what it says on there (indicating).

Mr. Lamb: Both of these exhibits we offer.

SUMMARIZE LINE 17, PAGE 79, THROUGH LINE 7, PAGE 86, AS FOLLOWS:

> "Exhibits 1-1 FF and 2-2C objected to by counsel for defendant on grounds that they had not been identified properly and on grounds that time clock cards were irrelevant in proving amount of time worked. The Master overruled the objections except that Exhibit 2-2C is admitted pursuant to stipulation that it is defendant's earning record, 'but it will have to be explained by some employee who has charge of keeping the records, before it will mean anything to the Court.'"

Mr. Cooper: We would like to note on the record our exception to the ruling.

Possibly a little time could be saved if it could be provided by stipulation of counsel, if it is agreeable to the Court, that an exception would be noted to any adverse ruling.

The Master: I don't think you need that any more. I think the requirement of an exception is abolished by the new Federal rules.

Mr. Cooper: Yes, I am familiar with the rules. Perhaps it is just a lingering habit that in the language of the rule the party's rights have not been adequately protected.

Mr. Nunneley: Your Honor, the witness and counsel are holding a conference over the time card.

Mr. Lamb: What is wrong with that?

Mr. Nunneley: If they want a conference, they should go somewhere else and not right on the witness stand.

The Master: I will direct you, then, in the future, not to confer with the witness, except when he is off the stand.

Mr. Lamb: All right.

The Master: Mr. Cooper suggests there be a stipulation that each objection be automatically followed by an exception. I think it is automatically provided under the new rules, but do you want to consent to it so that there will be no question about it?

Mr. Lamb: Well, the record won't be typed up to show an exception after every objection, will there?

The Master: There used to be a rule that the party must take an exception to adverse rulings or he can not take advantage of the objection.

Mr. Lamb: I will stipulate it is not necessary to have an exception after the overruling of the objection.

The Master: That is fine.

Q. (By Mr. Lamb): Mr. Anderson, can you advise us, first, the department in which you work.

A. The Dipping department.

Q. Now, I would like to have you explain a little bit of the physical setup there. Where is the Dipping de-

partment with reference to the gate at which you enter?

A. You mean when we go in the shop?

Q. Yes.

A. Well, the gate is on the—I could make motions to show you better.

By Mr. Lamb:

Q. Well, the motions won't go on the record, so show us as clearly as you can on the record. Use your own words and tell us just where the department is and where the gate is that you come in, and where the time clock is.

A. Well, as far as I recall, the Dipping department is on, I believe, the west side, southwest side of the shop. We come in on the east side, I believe, or the north side—I don't know, I can't remember directions. And we go into our cloakroom—we call it the bullpen. And there we take off our coats and hats and hang them up, and then go into where the time clock is, and it is about 250 feet from the time clock, I believe.

Q. That is, your department is some 250 feet from the time clock?

A. Yes, about that, I guess.

Q. Prior to punching the time clock, you say you go to a cloak-room.

A. Yes.

Q. Or bullpen, so-called, you take off your coat, hang up your hat?

A. Yes.

Q. Then from that point you go to the time clock, is that correct?

A. Yes.

Q. Punch your time clock?

A. Yes.

Q. Then you go directly from the time clock to your Dipping department?

A. Yes.

Q. And how long does it take you to go from the time clock to your Dipping department?

A. Oh, I imagine about half a minute.

Q. About a half a minute. And what do you do when you go to your Dipping department?

A. Well, we go in there and get our glaze ready to go to work.

Q. Yes.

A. Consists of taking water off the glaze and stirring it up and getting it to the right density to dip in.

Q. Getting your glaze to the proper density so that you can dip into it, is that correct?

A. Get the proper coating of glaze on the ware.

Q. And then you proceed to dip, do you?

A. Yes.

Q. You say it takes you about half a minute from the time you punch the time clock until the time you are at work mixing your glaze, and so forth?

A. Yes.

Q. Can you give us any notion about the number of people who punch a time clock, how rapidly they punch a time clock when they punch it within the course of a minute or two?

A. You mean when our department goes in?

Q. Yes.

A. I think the whole—if everybody in the department was by the clock they could punch it in I will say a minute and a half.

Q. Did you advise us the number of employees in your department?

A. No, I don't know exactly how many there is.

Q. Can you give us an estimate.

A. Oh, I imagine around 75.

Q. And then will you tell us whether it is the practice of all the people in your department, from your observation, to punch in the time clock and proceed to your department?

A. No, they didn't all punch in at once.

Q. Well, I mean from the time they would punch in, do they then proceed to their department to work?

A. Yes.

SUMMARIZE LINE 14, PAGE 90, THROUGH LINE 11, PAGE 99, AS FOLLOWS:

> "Counsel for defendant objected on grounds that witness should not be permitted to testify as to activities of other employees, at least without specifying names and occasions; and that witness' testimony should be limited to his own claim. Objection overruled."

The Master: It may be if he does not go beyond that, at that time you may make a motion to strike that testimony, and it may appear it isn't relevant at that time, but at this time I can't say it won't be relevant, and therefore I will overrule the objection.

I think first you better ask him the preliminary question as to whether he did have an opportunity to observe it.

Q. (By Mr. Lamb): Did you have an opportunity to observe the activities of the other people in your department?

A. Yes.

Q. With reference to punching the time clock and going to their work?

A. Yes.

Q. And will you advise us what you observed with respect to the punching of the time clock and going to work of the other people in your department?

SUMMARIZE LINE 4, PAGE 100, THROUGH LINE 10, PAGE 106, AS FOLLOWS:

> "Answer of witness stricken by Master as conclusion."

A. I was in there working and a fellow by the name of Art Baxter came in.

Q. Who was he?

A. He was a fellow dipper that worked alongside of me, we both worked in the same place tub dipping cups,

and Art came in about 10 minutes to 7:00, and right away the foreman, he run over there and he says, "What the hell is the idea of coming in late?" Art says, "I am not late."

The Master: Incidentally, what was the name of this foreman?

A. Ernest Harms. • • •

A. And he says, "I am going to give you a week off." "Well," I said, "that man isn't late, it isn't 7 o'clock yet." He said, "I told that man to come in at fourteen to, and here it is, these fellows been working two or three minutes already," and finally he did send Art home for the day. And, there is other times, he didn't tell it to me directly, but the whole department—

Mr. Cooper (Interposing): Just a minute, I want to renew my objection to "other times" where he didn't tell it to the witness directly. • • •

The Master: Go ahead and tell what the foreman said, and I will overrule the objection.

A. He got us together all in a circle and told us that they wanted us in here at, I don't know exactly whether it was 14 minutes to or whether it was 6:31. Sometimes we would come in at 14 minutes to the hour.

Q. (By Mr. Lamb): 14 minutes to 7:00?

A. Yes, at times we come in at one minute after 7:00.

Q. In other words, you had different starting times?

A. Yes.

Q. And then what did he tell you about reporting in?

A. He says he wanted us in there when he told us to come in.

Q. Yes.

A. He didn't want us coming in five minutes later, or like that.

The Master: What did he say as to when you should come in?

A. I think it was—I couldn't say the exact time, but anyhow it was one minute after the quarter.

Mr. Nunneley: We object, if he doesn't know the exact words, and ask that be stricken.

The Master: He can give the words to the best of his recollection, not the exact words.

Mr. Nunneley: He is guessing about it, he says he doesn't know.

Mr. Lamb: He can give to the best of his ability the substance of the conversation. Go ahead.

A. And in fact we used to ask the foreman "what time in the morning, Ernie?" And he would say, "6:31 or 14 to," if he wanted us to come in before seven he would say, "14 to."

The Master: Just a minute before you proceed. You have been talking about two different instances, and now you refer to a third, every night the foreman telling you to come in. In each case are you speaking of the same foreman?

A. Yes.

The Master: That is Ernie Harms.

A. Yes.

The Master: Has he been foreman of your department for the last four years, say?

A. No, the last two years about, I believe.

The Master: I see. Now, this first conversation that you related was a conversation between one Baxter and yourself and the foreman, Mr. Harms?

A. Yes.

The Master: I don't think you identified the time or place of that.

A. Well, it was in the morning.

The Master: It was in the morning, about how long ago?

A. Before the first walk-out.

The Master: It was before the first strike?

A. I wouldn't know the exact date.

The Master: When was the first walk-out?

Mr. Cooper: April 14.

Mr. Lamb: April 14; what year?

Mr. Nunneley: 1941.

The Master: 1941, last year.

Mr. Lamb: April, 1941.

The Master: Can you recall about how long before that walk-out this incident took place?

A. No, I couldn't.

The Master: And where in the department did this conversation occur?

A. Right by our machine, the dipping machine, the cup-dipping machine.

The Master: Is there one dipping machine for the whole department, or individual dipping machines?

A. No, there was three in there at the time, this was the hand-dipping machine.

The Master: Right in front of the hand-dipping machine?

A. Yes.

The Master: This other instance, where the foreman called all the men together and told them he wanted them to get down at the time he told them to, where did he call you together?

A. It was right in the dipping house; he got us right in a group.

The Master: Would you say that was after working hours or what time?

A. Before we went home at night.

The Master: Just before you left in the evening?

A. Yes.

Q. (By Mr. Lamb): Did he tell you what time to report the next day?

A. I don't remember for sure, I think he did, but I couldn't swear.

Mr. Cooper: If your Honor please, could there be something about the general time of this second conversation?

The Master: Didn't I get that. What did he answer when I asked him about the time?

(Record read.)

The Master: I guess I didn't get it. What time was this with reference to the time of the year? Did you say it was about a year ago? I think you did.

The Witness: I believe I said it was about a year ago.

The Master: I think I had that identified before. He said about a year ago. Is that the best you can recall the time this meeting took place?

A. Yes, sir.

Q. (By Mr. Lamb, continuing): Have you discussed the matter of reporting to work with any other foreman or officials than Mr. Harms?

A. Yes, I have.

Q. Will you give us the name, please?

A. Ted Roth.

Q. Ted Roth. What department was he in?

A. He used to be foreman of the Dipping.

Q. Dipping house. He was foreman of the dipping house. Was he there prior to Mr. Harms?

A. Yes.

Q. (By Mr. Lamb, continuing): And, what instructions did he give relative to reporting to work, or what announcement did he give relative to company policy in connection with reporting for work?

Mr. Cooper: Just a moment. Exception to the form of the question, your Honor.

Mr. Lamb: I should say "if any."

Mr. Cooper: Also, what instructions?

The Master: I think you better start out, you asked him if he had a conversation with some other foreman and he said he did, with Mr. Roth.

Mr. Lamb: Yes.

The Master: The orthodox way to ask this would be what time, and the place, and what did the foreman say. He hasn't said that the foreman gave any instructions, or that he knew of any instructions.

Mr. Lamb: Yes.

Q. (By Mr. Lamb, continuing): Will you fix the time of such conversations and the place, if possible?

A. Well, the last time I talked to him was over at his house about three weeks ago.

Mr. Cooper: I think that would be inadmissible, your Honor.

Mr. Lamb: It is a declaration of a foreman.

The Master: Is he still foreman?

A. No, he is not now.

The Master: Is he employed by the company?

A. No.

Mr. Lamb: It is a declaration against interest.

Mr. Cooper: And it is way subsequent to the period covered by the suit that the foreman was employed.

The Master: Did he quit the plant at the time that this other man, Mr. Harms, became foreman?

A. He told me he got fired.

The Master: At that time?

A. Yes.

The Master: That was the time his employment ceased.

A. Yes.

The Master: Did you have any conversations with him, or hear any instructions from him before that time when he was still foreman?

A. Yes, he used to instruct us to come in at 6:31, too.

Q. (By Lamb, continuing): What was that? You say he used to instruct you to come in at 6:31, too?

A. Yes.

Q. Give us the conversations you had with him relative to your reporting to work while he was still a foreman. When was that?

A. Well, he used to tell us to come in at 6:31 or 14 to.

The Master: When did he tell you that?

A. Well, he used to tell us that a number of times.

Q. (By Mr. Lamb, continuing): When he was foreman?

A. Yes.

Q. That is during the year—can you fix the year; 1939 or 1940?

A. Well, I think he has been out of there about—I couldn't say for sure—about two years, I believe.

Q. But, it was subsequent to October 24, 1938?

A. Yes.

Mr. Cooper: I move to strike that answer, your Honor please. There is no statement of the witness as far as I heard it except the conclusion that Mr. Ted Roth had a conversation as to which the witness expresses a conclusion with some individuals which the witness has not identified.

Mr. Lamb: It wasn't a conclusion; it was an instruction to report to work at 6:31.

The Master: He says, "He used to tell us to report to work." Did you have some conversations with him at the time he was foreman, and since October, 1938, when he told you with a group of employees around that you should come to work at 6:31?

A. No, I didn't exactly, but he was addressing all of us.

The Master: He was addressing all of you, and you were part of the ones he was addressing?

A. Yes.

The Master: When would he do that? In group meetings or—

A. (Interrupting)—Well, at group meetings, and then we would be working at, say, before noon. I would say, "What time in the afternoon, Mr. Roth?" And, he would say, "12:31 or 14 to." Something to that effect.

The Master: I see. Did he ever tell it to you individually when no other employee was around?

A. Yes.

The Master: When was that?

A. Well, I couldn't state the number of times. Probably—I couldn't say every other day, but at least two or three times a week.

The Master: How did these occasions come about?

A. Well, he would be walking through our mangle where I was working and we would ask him what time to come in.

The Master: I think that testimony is competent with the explanations he has given.

Q. (By Mr. Lamb, continuing): Now, I would like to have you tell us any further conversations that you had with Mr. Harms, or further instructions from Mr. Harms, your foreman, relative to your reporting in or checking out other than those about which you have already testified.

A. Yes. For about two weeks straight at one time we were coming in and waiting at the time clock for that minute to go by, and he took the time cards from all of the dippers and punched them in so that we could get in there to work. He waited until 14 to so he punched them in.

Mr. Cooper: I move to strike that on the ground the time isn't fixed, and on the ground it refers to a number of individuals who, apparently, are not involved here.

Mr. Lamb: Let us fix the time.

The Master: Fix the time when this incident occurred.

A. I couldn't fix the exact time.

The Master: Well, to the best of your recollection, then?

A. I couldn't state the exact time. There was a lot of other dippers.

The Master: Would it be as long as a year ago?

A. I don't believe it was a year ago.

The Master: Six months?

A. Probably.

The Master: Is that your best recollection?

A. Yes.

Mr. Cooper: Your Honor please, that would make it subsequent to the time of the action, and I move to strike it out. • • •

The Master: I will reserve a ruling upon this objection. I will have to think over the question. • • •

Mr. Lamb: Do I understand we take the testimony subject to your future ruling?

The Master: Yes, that is right. I will reserve a ruling on it. The only thing is now, that Mr. Cooper also ob-

Q. (By Mr. Lamb) Have you heard the foreman give any further instructions relative to reporting for work, other than this you have outlined, Mr. Anderson?

A. Well, they used to make us work until five minutes to 12 and then get out before 12 o'clock at times.

Q. Yes.

A. And then they—at other times they would work us to probably ten after 12 and then make us get out before quarter after.

The Master: Answer that yes or no, were there any other instructions before those you previously testified to?

A. Yes.

Q. (By Mr. Lamb): Will you kindly give us those instructions?

The Master: The time and place to the best of your recollection?

A. I can't tell you the exact, or the exact words he said.

Q. Who was the foreman?

A. Ernie Harms, but the belt, he used to call it after 12, so they fixed it so we would go out before the belt did, so they wouldn't be a jam up at the clock, so they called us all together, Ernie Harms called us all together and said, "You people work until ten—or five minutes to 12," so we could get out before 12, and we did that for about a year, and then I believe they changed that policy, the foreman did, let the belt go out first, and we went out afterwards. I remember the time they called us up and said, "You fellows have been getting out and getting your dinner. Now give the belt a chance to get out early," and I guess they went out early and we went after.

Q. You refer to the belt, a production line?

A. Yes, the department next to ours.

Q. In other words, the department went at different times, is that correct?

A. Yes.

Q. To lunch?

A. Yes.

The Master: You are referring to another department going to lunch first?

A. Yes.

The Master: Rather, you went ahead of them originally and then the policy was reversed, and you went after they went to lunch?

A. Yes.

The Master: You have spoken of some times, what times were you getting paid to?

A. When we went out five to 12, we got paid to 11:45.

The Master: At that time your shift got paid from 7:45 in the morning until 11:45.

A. No, probably it would vary. We would get paid from, say, 7 o'clock until 11:45.

The Master: 7 o'clock until 11:45?

A. Yes.

Q. (By Mr. Lamb) If they reported at 6:48, you got paid from 7.

A. Yes.

Q. And if you went out at five minutes to 12 you got paid to 11:45?

A. 11:45.

The Master: Well, then what was the afternoon shift, as far as the hours you were getting paid, and the company agreed with the hours?

A. Lots of times we would come in at 12:31, our time would start.

Mr. Nunneley: You are talking about what you got paid? What you mean is you got paid piece-work, didn't you?

Mr. Lamb: Let the Master ask the question.

The Master: I am trying to get the hours of the shift you were working to. Of course I know there is a dispute between the workers and the company, you claim you started work before the shift records commence, as far as the records went, the company records went, your shift was from 7 until 11:45?

A. Yes.

The Master: What time did you come back from lunch, and what time did you get, according to the company records?

A. Various times, sometimes they would have us come in at, say, 12:31, then our time wouldn't start until, it would be a quarter to one, the company would pay us, the time cards wouldn't show until quarter to one.

The Master: The company shift hours varied from time to time, is that the idea?

A. Yes, sometimes we would come in at 14 minutes to one.

The Master: Sometimes the company's shift records would be from 7 to 11:45 and from 12:45 until what time in the afternoon?

A. Until one—

The Master: What time in the afternoon would you usually quit?

Q. (By Mr. Lamb) The quitting time?

A. It was according to how much ware we had out. If we had lots of ware, we would probably quit at quarter of four, and if we didn't we would probably work until after.

The Master: I see. All right, go ahead, Mr. Lamb.

Q. (By Mr. Lamb) I hand you herewith Plaintiff's Exhibit 1, representing time card records as indicative of the time marked "Morning in, Noon out, Noon in, Night out." Will you examine that please (handing card to the witness), and advise us whether or not that card, the time clock records represented by Exhibit 1, were in fact—were in fact punched in and out in accordance with the printed blue and red figures thereon?

A. Yes.

Q. Can you advise us whether or not this is a one or a two-week period, payroll period, represented by each card, Exhibit 1?

A. That is a two-week period.

Q. Can you advise me how you were paid, whether by check or cash or just how you were paid for the two-week period?

A. Well, I think it was a bank draft, I don't think it was a check, it couldn't be cashed only at the bank.

Q. That is at a particular bank?

A. Yes.

Q. And all your employees who received this draft, or money order or check, had to report to this one bank that is named therein, is that correct?

A. Yes.

Q. Would you give us the name of the bank.

A. I believe it is the First National Bank of Mount Clemens.

Q. Do you have knowledge of whether that is a subsidiary or owned by the Mount Clemens Pottery Company?

A. No, I don't know. • • •

Q. (By Mr. Lamb) I call your attention to Plaintiff's Exhibit 1-Z and Plaintiff's Exhibit 2-B for the period ending March 19, 1941, and ask you if you will first state for the record the total hours that are written in pencil on Plaintiff's Exhibit 1-Z?

A. 83-3/4.

Q. That represents the company's computation of the hours that are marked on that particular exhibit?

A. Yes. • • •

Mr. Lamb: Would it be too much to ask the Master to put on one witness for a minute or two out of order, and excuse this witness so that he can return to Mount Clemens if the Court is only going to continue until 4:30?

The Master: That is all right, yes.

EARL R. TROMBLEY, was thereupon called as a witness herein, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lamb:

Q. Will you give me your name and address please?
A. Earl R. Trombley, 1273 North Broadway.
Q. Mt. Clemens, Michigan?
A. Mt. Clemens, Michigan.
Q. You are an employee of The Mt. Clemens Pottery Company?
A. I was until January 1, last year, and I quit.
The Master (Interposing): January 1, 1941, or June 1?
A. June 1.
The Master: June 1, 1941.
Q. I hand you herewith what has been marked for identification—
The Master: (Interposing) What will be marked as Exhibit 3.
Q. (By Mr. Lamb, continuing) Plaintiff's Exhibit 3, and ask you to look at them and advise the Court what they are (handing documents to witness)?
A. These are my time cards that I used to punch in and out going to and from work at Mt. Clemens Pottery.
Q. Do you punch those time cards in and out?
A. Yes, sir.
Q. And represent the working time, the actual working time—
Mr. Cooper: (Interposing) I object.
Q. (Continuing) —that you have worked for The Mt. Clemens Pottery Company.
Mr. Cooper: Not only is it a leading question, but it asks only for a conclusion, your Honor.

The Master: It is leading.

Mr. Lamb: I think it is leading. I will ask it in a less leading way, I hope.

Q. (By Mr. Lamb, continuing) Can you advise us whether or not this represents the time that you worked—

Mr. Cooper: (Interposing) Same objection.

Q. (By Mr. Lamb) —for The Mt. Clemens Pottery Company?

A. Well, I couldn't say—

The Master: (Interposing) Just a minute, please. Wait until there is a ruling on the objection before you answer.

Mr. Lamb: Let us have him tell what they are.

Q. (By Mr. Lamb) What are those cards? What do they indicate?

A. These are the time cards that I punched going to and from work at The Mt. Clemens Pottery.

Q. Can you advise us what department you worked in?

A. I worked in the Gloss Department.

Q. How far is your Gloss Department from the time clock.

A. I would say, around 150, 200 feet.

Q. And can you advise us what your procedure was relative to the time that you punched the time clock to the time you started work?

A. Well, we punched our time cards in at 14 to in the morning. It took us about—

Mr. Cooper: (Interposing) Just a moment, I move to strike that. I think the question was asked what the witness did, and the answer, I take it, speaks for someone else unidentified.

Mr. Lamb: Speak for yourself.

The Master: Speak for yourself. What was your procedure?

A. Well, I punched in at 14 to. Went from there directly to work.

Q. Went directly to work?

A. Yes, sir.

The Master: 14 minutes to the hour?

A. Yes.

The Master: Was that always 14 minutes before 7:00, or did that vary?

A. Well, on Mondays it was 6:30 we would go in, 6:31, and we would come out and punch in and that was changed later on. I don't know just exactly when, but it was changed.

Q. (By Mr. Lamb) Mondays of the week do I understand you to say you went in at 6:30?

A. 6:31.

Q. 6:31. Other days of the week what was your usual starting time?

A. 14 to 7:00. • • •

The Master: Let me ask this question. Did you punch the time card in every occasion before you went to work?

A. No, on Monday mornings we didn't.

The Master: What did you do on Monday mornings?

A. We went in and loaded the belt up. Friday night we had to clean the belt off, and it was empty. Monday mornings we had to go in and fill it up and then go out.

The Master: I am asking just what you did.

A. I went out and punched in 14 to.

Q. (By Mr. Lamb) Do you understand the Master's question, and will you answer it completely? You said on Friday nights you did what?

A. Clean up the line, the whole line belt we worked on.

Q. Was that done after you had checked out?

A. Yes, at times it was.

Q. I see. Now, you said on Monday mornings you cleaned up the belt line?

A. No, Monday mornings we filled the line again.

Q. With what?

A. Staggers.

Q. Staggers. And then you went out?

A. And punched in at 14 to.

Q. Then you went out and punched in?

A. Yes.

Q. In other words, on Monday mornings prior to punching in, you did some work?

A. Yes, sir.

Q. In the line of loading the belts, is that what you used to term it?

The Master: Answer out loud. All of this has to go down on the record here. You will have to answer. A nod of your head doesn't get down. Your answer was "Yes"?

A. Yes.

Q. (By Mr. Lamb) How long did you work on Monday mornings in that activity of loading the belts prior to punching in the time clock?

A. Oh, anywhere from 10 to 14 minutes.

Q. I see.

The Master: Was that done every Monday?

A. Every Monday morning.

The Master: All the time you worked at the plant?

A. Later on that was changed. We punched in when we started loading the belt. Not very long. I quit right after that.

The Master: Later you punched the time card before you loaded the belt?

A. Yes, sir.

Q. (By Mr. Lamb) For how long a period did you punch the time clock before loading the belt, how many weeks or months or days or whatever it was?

A. I would say about three years.

Q. When did that practice cease with reference to the time that you quit? When did they start the new practice?

A. I couldn't say exactly. It was around January or February, I imagine.

Q. Of last year?

A. Yes, sir.

Q. 1941?

A. Yes, sir.

Q. So I understand you to say that on Monday morn-

ings, between October of 1938 and January or February of 1941, you would load the belts for some time, and then go out and check in by punching the time clock?

A. Yes, sir.

Mr. Nunneley: We object to all that, of course, as being leading.

The Master: It would be leading if it weren't a summary question.

Mr. Lamb: That is what I am attempting to do is summarize.

The Master: I am not sure in his previous answer he went back as far as October, 1938.

Q. (By Mr. Lamb) When did you start to work, Mr. Trombley?

A. I couldn't say.

Q. What year?

A. I couldn't say that. 1937 or 1938.

Q. (By Mr. Lamb) I understand you started work in 1937 or 1938 for The Mt. Clemens Pottery Company?

A. Yes, sir.

Q. And this practice of working Monday mornings prior to checking in, did that continue from the time you started to work up to the time that you have testified to in February or January, 1941?

A. Yes.

Q. Could you tell me under what instructions, if any, you proceeded to do that work on Monday mornings prior to checking in?

A. Well, the only reason I can give is because everybody else did it, and it was my job to do it.

Q. I see.

A. I didn't get no direct orders to do it; not at that time.

Q. Everyone else in your department had to do it?

A. All the boys on the line. The girls didn't.

Q. I see. You refer to the boys on the line as having to do this work prior to checking in, as being the boys on what line, in what department?

A. In the gloss department, in the gloss line, the stagger line.

Q. Can you give us an estimate of how many men were on that line?

A. I would say 20.

Q. What—who was your foreman?

A. Herman Engleman. • • •

Q. Engleman. Would you give us an estimate of the time worked on Friday nights, as you have described, in cleaning or unloading this line?

A. I would say about a half hour.

Q. Did this occur every Friday night?

A. Yes, sir.

Q. And did all the men in your department participate in it?

A. Yes, sir.

Q. Under instructions of the foreman?

A. Yes, sir.

Mr. Cooper: I move to strike that last question and answer, your Honor.

Mr. Lamb: Well, he said "Yes."

Mr. Nunneley: It is all leading.

Mr. Cooper: It is a very leading question and asks for nothing but a conclusion.

The Master: It is a leading question. You will have to ask him what instructions were given.

Q. (By Mr. Lamb) What instructions of the foreman with reference to this work on Friday night were given?

The Court: That you yourself personally know of; not what somebody else told you. What instructions did he give you, either alone or in the group?

A. Well, I can't think of any he gave me direct. • • •

Q. (By Mr. Lamb) Did you have to do the work?

A. Yes, sir.

Q. Did the foreman know you did it? • • •

A. He was right behind us, and if we didn't do it right, he would call us back in and we would have to do it over.

The Master: The previous question, just to get it out of the way, I will strike it. He has given an explicit answer now.

Q. (By Mr. Lamb) I think the Master would like to have you tell us just what this cleaning process was, or unloading?

A. Well, there was a belt about a foot and six inches wide and about 100 feet long, maybe a little better. It had a pan under it. We had to clean all that dirt out.

Q. What did you do with the dirt?

A. Threw it on the floor and then sweep the floor up and wheel it outside.

The Master: How did you happen to participate in this if you didn't receive any direct instructions from the foreman?

A. Well, we just all started doing it, so I started to do it. It was all the stagger pushers on the line. • • •

Q. (By Mr. Lamb) Now, you say you put this refuse, or the cleaned material, took it off of the machines and put it on the floor?

A. Yes, sir.

Q. And then loaded the stuff from the floor on to the conveyor?

A. On to a wheel-barrow.

Q. And then where did you take it in the wheel-barrow?

A. We had a scrap pile out in the back of the shop and we wheeled that out there and dumped it and it was done, went home.

The Master: With reference to all of this activity, when did you punch the time clock?

A. As soon as the belt stopped, before we started cleaning up. Every time we got done we would go out and punch the cards; the girls all did this, too, punched the cards out and we would come back in to clean up and go home after we had cleaned up.

Q. (By Mr. Lamb) Did that occur every Friday night while you were employed at The Mt. Clemens Pottery Company?

A. Yes, sir.

The Master: Right up to June when you quit, June, 1941?

A. Yes, I am pretty sure it was.

The Master: And during all that period did you punch the time clock before you started the cleaning?

A. Once in a great while.

The Master: I beg your pardon?

A. Once in a great while we did.

The Master: You mean only once in a great while you punched the time clock before you started cleaning?

A. Yes.

The Master: What did you do the other time?

A. I misunderstood your question.

The Master: I am asking you now, during this period in which you were doing this cleaning up, when did you punch the time clock?

A. Punched the card as soon as we got through the work and then cleaned up.

The Master: Was that true all through this period?

A. Yes, sir.

Q. (By Mr. Lamb) Do I understand you now to say that on Friday nights when the belt stopped you then went out and checked the time clock?

A. Yes, sir.

Q. Then you came back and performed these activities of cleaning the machine and taking the cleaned material away?

A. Yes, sir.

Q. Now, are you aware that the other people in your department did the same thing?

A. Yes, they all had their cleaning up jobs to do in my department.

Q. And that occurred on Friday nights?

A. Friday nights.

Q. Are you aware of whether or not the people in your department participated in this loading operation prior to checking in on Monday mornings?

Mr. Nunneley: If the Court please, we make the same objection that we made before. If it is to be considered as anything other than a general background proposition, if it is to be considered as testimony as to any of the other plaintiffs, then they should be named so we will know who it is applicable to. • • •

The Master: I will make the ruling and overrule the objection. I may change my mind later.

Q. (By Mr. Lamb) Relative to the other people in your department, and what they did on Monday mornings—

The Master: Specifically, did they do the loading job you speak of before starting work?

A. The men did.

Q. (By Mr. Lamb) And you observed that?

A. Yes, sir.

The Master: Do you know when the others punched the time clock?

A. The girls would punch in at 14 to 7.

The Master: The girls didn't participate in this?

A. No, not in the loading of the belt.

The Master: You say all the men participated in loading the belt?

A. All the men in that department.

The Master: Did they punch the time clock, that is, others besides yourself, before or after they loaded the belt?

A. They did it after they loaded the belt.

The Master: You know that of your own knowledge?

A. Yes, sir, I have seen them.

The Master: Did you ever see one of them punch it before?

A. I don't believe so.

R. Trombley

ıary 12, 1942

PAGE 155, THROUGH LINE
)LLOWS:

ıdant moved to strike testimony
ey as to doing additional work
at time clock on grounds that it
laim, outside scope of complaint
ars. Motion taken under advise-

ıtinuing) I will hand you here-
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Well, will you tell us what you
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s were the same that I have seen
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ther employees pay stubs, have

Q. Now, when are these pay stubs given to you?
A. Every other Friday noon.
Q. You are paid every two weeks, is that correct?
A. Yes, sir.
Q. And every other Friday noon therefore you receive a pay check with this stub attached thereto, is that correct?
A. Yes.

SUMMARIZE FROM LINE 12, PAGE 172, THROUGH LINE 7, PAGE 174, AS FOLLOWS:

"Exhibit 4-4I received in evidence as example of method of making wage payments."

The Master: Are you still employed at the plant out there?
A. No, sir, I quit last June, 1941.
The Master: Did you ever make any objection to your foreman or to any superior at the plant about the fact that you were not getting paid the amount of time that you worked out there?
A. No, I don't believe I have.
The Master: Go ahead and cross examine.

Cross Examination

By Mr. Nunneley:

Q. Now, Mr. Trombley, how old are you?
A. 23.
Q. 23, and where do you work now?
A. I am unemployed right now. I was employed at the Hudson Motor Car up to last Wednesday.
Q. Up until last Wednesday you were employed at the Hudson Motor Car, and prior to that time how long were you employed at the pottery?
A. I started there in the spring of 1937.

Q. Started there in the spring of 1937, and in what department did you work?

A. Glost department.

Q. During all the time you were there did you work in the Glost department—"g-l-o-s-t," is that right?

A. Yes.

Q. And you, during all of your experience at the pottery, you worked in that one department?

A. Well, there is days I worked in a different department, but just for a day; if they were short a man they would send me over.

Q. But as a general rule you were a man working in the glost department?

A. Yes, sir.

Q. And how many people worked in that department, about?

A. I would say about fifty—some girls and about twenty fellows.

Q. About twenty men, fifteen or twenty, and that is your best judgment on the number, is that right?

A. That is a rough guess.

Q. And did the people in that department work on a belt?

A. Called a glost belt.

Q. That is a sort of conveyor, isn't it?

A. Yes, sir.

Q. In which the stuff is put on at one end and worked on it as it goes along and is finished at the other end, as far as your department is concerned, is that right?

A. Well, they had benches, sort of, see, a belt on both sides, the girls were in the benches.

Q. And they performed an operation and moved it over and put it on the belt on the other side?

A. That is right.

Q. Which end of the belt were you on, the end where the product started in, or where it came off?

A. About the middle, I would say.

Q. You would say you were in the middle. In order for that department to work, practically everybody had to be there, didn't they?

A. That is right.

Q. Practically everybody; in other words, I wouldn't say a hundred per cent, but almost everybody that worked in that department had to be on the job before it could work, isn't that true?

A. Yes.

The Master: Pardon me; just what did you do in your department, what operation did you perform?

A. W[illegible]shed the saggers into the girls' benches.

Q. Can you explain to the court what a sagger is; you are talking about something, I am not too clear on it, and I have been through there several times; what is a sagger?

A. A sagger is sort of a casing that the dishes are put into and baked and run through the kilns.

Q. A casing in which they are put as there, or on there, and goes through the kilns?

A. They are loaded on the cars and sent to the kilns.

Q. And your job was—what did you do with the saggers?

A. Pushed them to the girls and they filled them.

Q. You push them to where the girls were working and they put the dishes in, is that right?

A. Yes, sir.

Q. How large a thing is this sagger?

A. There are four or five different sizes of them, different shapes for different sized ware.

The Master: Let me get this straight, the dishes came in and were put on one conveyor belt and then the girls performed some operation on them and put them on the other conveyor belt?

A. The dishes came from the dipping department, they were put into trucks and they were pushed across the aisle to our department and they had fellows carrying the ware, putting them into the benches and shelves and the

girls would take them off the benches and put them into the saggers.

The Master: Oh, I see. The girls put them in the saggers then. Then what did you do with the saggers?

A. The saggers come down the line. We push them to the girls, and they fill them and push them out the other side.

Q. (By Mr. Nunneley) The saggers come down on the belt?

A. Yes, sir.

Q. And you placed the saggers where the girls could get at them?

A. That is right.

Q. And she did whatever she had to do to each piece and put it in, is that correct?

A. Yes.

Q. When it got to the end of your department, what became of it? Were they loaded on a truck, or something?

A. Loaded on to cars, flat cars.

Q. Sort of flat cars, is that right?

A. Yes.

Q. And the cars go to a kiln, is that right?

A. That is right.

Q. Just to give the Judge some idea, how big is that kiln?

A. I don't know.

Q. Well, it runs nearly the whole length of that plant, doesn't it?

A. About half, I would say.

Q. Half the length of the plant. And in there the cars go through there, and the ware is baked, is that correct?

A. That is right.

Q. And comes out the other end?

A. Yes.

Q. Now, in your department, you got paid how?

A. Got paid by the car.

Q. By the car. In other words, the group in your department were paid by the number of cars of ware that they put out of there, is that correct?

A. That is right.

Q. And you understood that when you went to work there, didn't you?

A. Yes.

Q. You didn't get paid by the hour, ever, did you?

A. No.

Q. You got paid solely by the number of cars that were finished in the department, and that was divided up in some manner among the various employees, is that right?

A. That is right.

Q. So that during all of the period that you were there, you were never working on any hourly basis at all, were you?

A. On Saturdays, when we were called in—

Q. (Interposing) I mean, as a general rule.

Mr. Lamb: Wait a second. Could he finish his answer?

Mr. Nunneley: On Saturdays—

A. We got paid by the hour.

Q. (By Mr. Nunneley) If you did some extra work that wasn't in the department, you got paid by the hour?

A. By the hour.

Q. You were called in extra; when you were called in extra, you were always paid, were you?

A. Oh, yes.

Q. Did you ever figure out how much an hour you got?

A. For that Saturday?

Q. Any time?

A. No, you couldn't figure it out.

Q. You never could figure it out?

A. We tried figuring it out, but we never got, —

Q. (Interposing) You tried to figure out—

Mr. Lamb: (Interposing) Just a minute. Let him finish.

Q. (Continuing) And you couldn't figure out how much an hour you got?

A. We tried to, but we couldn't do it.

Q. (By Mr. Nunneley) And you couldn't arrive at any notion of how much rate you got at all, is that right, per hour?

A. Well, you could come near it, but you couldn't—

Q. (Interposing) You could come near it; all right. Did you get as much as fifty cents an hour?

Mr. Lamb: Objection.

The Master: If he knows.

Mr. Lamb: What hour, what day, what week?

Mr. Nunneley: All the time.

Mr. Lamb: What year?

The Master: When he was working on an hourly basis, you mean?

Mr. Nunneley: When he was working on any basis.

A. Well, that is hard to say. We wouldn't put out the same amount of cars per hour.

The Master: Now, the question is, did you get as much as fifty cents an hour. I will overrule the objection.

A. Well, we couldn't say, because there is hours we wouldn't put out the same amount of cars we would the other hours.

Q. (By Mr. Nunneley) That is right. Some hours you might not put out any; that is right, isn't it?

A. That is right.

Q. But you were being paid at the end of your two weeks period, — did you have enough money so that it was fifty cents an hour for all the time that you were there, that you worked?

Mr. Lamb: I object. The records will be the best evidence of that.

The Master: I will overrule the objection. This is cross examination. Will you read the question?

(Question read.) • • •

A. I can't say whether I got fifty cents an hour or not.

Q. (By Mr. Nunneley) Do you know whether you got more than fifty cents a week?

The Master: Do you know whether you got more than fifty cents a week for a two-week period?

A. I wouldn't say that, either. I couldn't say. . . .

Q. (By Mr. Nunneley) Now, Mr. Trombley, in the operation of this belt work in there, you said a few minutes ago that practically everybody had to be there to work before the thing could get into production; that is right, isn't it?

A. Yes.

Q. And, can you name some of the people that had to be there? Name some of them.

A. That had to be there?

Q. Yes, in order for the thing to start to work. Just who some of the other people were, that had to be in that group?

A. There was Floyd Pearl.

Q. Yes.

A. There is—I can give you a lot of last names. Norman Harmes.

Q. Yes.

A. Norman Harmstead, and myself, George Houtoof.

Q. Did some of the women folks have to be there, too?

A. That all depends. As far as putting out the saggers, they had to be there to fill them.

Q. In other words, in order to get any work done in your department to collect the clay for the cars at the other end, the women folks had to be there, as well as the men, didn't they?

A. Yes.

Q. And under those circumstances, of course, you couldn't start to work until at least most all the people in that group were there, isn't that right?

A. That is right.

Q. Now, do you know a girl by the name of Rita Schulte?

A. Yes.

Q. Is she employed in that department?

A. She was. I can't say whether she is now.

Q. Or was employed in that department. And, for most of the time that you were there?

A. I imagine so.

Q. Now, you said the other day that after the rest of them got through every Friday night, or some Friday nights, anyway, you stayed and cleaned up; is that right?

A. That is right.

Q. And you did that before you,— or after you punched out, is that right?

A. That is right.

Q. And when you would do that, of course, the girls would be gone, wouldn't they?

A. The girls would clean up, but they was always done before we was.

Q. What is that?

A. The girls were always done cleaning up before we were.

Q. They would be done cleaning up before you were?

A. Yes, sir.

Q. And they would punch out ahead of you, is that right?

A. They would go out and punch out before the fellows would.

Q. And you would punch out—do you want the Court to understand now that you punched out after you got through that cleaning up, or before?

A. Before we got through.

Q. Before you did the cleaning up, you punched out immediately upon the stopping of the work, the stopping of the belt, is that right?

A. That is right.

Q. You went out and punched out?

A. Yes, sir.

Q. And then came back and cleaned up, so that under those conditions you men and the girls would all punch out at the same time, wouldn't you?

A. All about the same time.

Q. Practically the same time, and then you would go back and do some work, is that right?

A. That is right.

Q. There wouldn't be any occasion for you staying there after the girls were gone, excepting to clean up, would there?

A. No.

Q. And that clean-up took what, ten or fifteen minutes?

A. Anywhere from fifteen to half an hour.

Q. Did you take turns at doing that?

A. No, it took all of us, all of us fellows.

Q. You didn't do it every Friday, did you, sometimes you did it and sometimes you didn't?

A. Every Friday.

Q. Every Friday you did it?

A. Yes.

Q. By the way, during that period that you worked there, especially the last couple of years, were there some extra help in that department?

A. Just what do you mean, extra help?

Q. Well, some help who took turns at working?

A. No—you mean an extra man?

Q. Yes.

A. Well, we were getting days off, if that is what you mean.

Q. You were getting days off, in other words, there were extra men in the department, so in order to give everybody some work, there were days off for you fellows, weren't there?

A. Yes.

Q. And so that in a good many weeks you had a day off, didn't you?

A. Yes, sir.

Q. And you didn't work at all?

A. Not that day, no.

Q. Not that day, and that was true of all the other men in the department, wasn't it?

A. They had days off.

Q. They all had days off during the week so that at least some of the weeks you didn't even work five days, did you?

A. Some weeks, no. . . .

The Master: Mr. Trombley, let me ask you this: what was the piece-work rate that you were being paid? How much did you get for moving each one of these saggers?

A. Four and a quarter of a cent a car.

The Master: Four and a quarter cents per car?

A. Yes, sir.

The Master: Was that true throughout the entire period you worked there? Was that the same rate?

A. No, we had small raises. I couldn't say just how much.

The Master: You started out at four and a quarter?

A. No, we started out, I think it was an hourly basis when we first started work there. I couldn't say just how much.

The Master: How long ago did you start to work there?

A. In 1937, the spring of 1937.

The Master: You started out on an hourly basis?

A. I think for the first week or two weeks.

The Master: Oh, while you were beginning. I see.

A. Yes.

The Master: And then when you started on a piece-work basis or being paid at piece-work rates, did you start out at the four and a quarter cents per car?

A. Yes, sir.

The Master: And from time to time you got small raises. What was the highest amount you got per car?

A. I think the last raise we got was five cents per car. I don't know whether that is still what they pay or not.

The Master: Did the company furnish you any records showing how many cars you moved during a day?

A. No, sir.

The Master: Was there any blackboard or any record in the department, showing how many cars were moved?

A. The fellows in the back that unloaded the cars, they kept a record, but I couldn't say.

The Master: They kept their own personal records?

A. Yes. Just counted the cars.

The Master: Do I understand there was no record kept by the company each day which showed you how much—

A. (Interrupting) None that I ever seen.

The Master: Did you every day at noon receive a record from the company showing how much you had earned for the previous work, or how much work you had done?

A. No, sir. • • •

The Master: They received the number of hours.

Mr. Nunneley: From the time clock card.

The Master: You received a copy of your time clock card every day?

Mr. Nunneley: His card itself.

A. Just the card itself. • • •

The Master: And that showed the number of hours that you had worked the previous day?

A. Yes, sir.

The Master: Did it show the number of pieces you had turned out?

A. No, sir.

The Master: Did you ever receive from the company—I am trying to find out just what record you did get from the company—did you ever receive from them any record showing the number of pieces that you had turned out on any given day, or any other given period of time, such as a week or month?

A. No, sir.

The Master: Did you ever keep any such record yourself of the number of cars you moved during the day?

A. No, sir.

The Master: Go ahead.

Q. (By Mr. Nunneley) We were talking about whether you didn't earn at least fifty cents an hour during the period you were there, let's say after the first two or three weeks, is that right?

A. I couldn't say.

Q. You don't know whether you did or not?

A. No, sir.

Q. And during any two-week period, did you ever get less than an amount equal to fifty cents an hour?

Mr. Lamb: I object to that.

A. What is that?

Q. (By Mr. Nunneley) During any two-week period, did you ever get less than an amount equal to fifty cents an hour, for all the time you worked?

The Master: Just a minute. Mr. Lamb wants to make an objection to these questions, and I will take a general objection to all of this line of questioning, as to the minimum rate of pay he received on the average, and overrule it.

Mr. Lamb: We went through this particular matter quite extensively before, and I won't repeat it.

The Master: To avoid the necessity of your taking an objection every time, I will make a ruling that you may have a general objection to this line of questioning. Read the question.

(Question read.)

A. I couldn't say.

Q. (By Mr. Nunneley) You couldn't say?

A. No.

Q. When you went into the shop, there is one entrance, isn't there, employees entrance, to the factory or shop?

A. Yes, sir.

Q. And where is that situated?

A. That is on Church Street.

Q. Is it on the northeast corner of the shop?

A. It was on the south side.

Q. The entrance is on the south side of Church Street, but I say it is on the northeast corner of the shop, isn't it?

A. Yes, it was.

Q. So we can get the picture in the record, and before the Court, the plant is located on the southwest corner of Church Street and Rose Street, is that right?

A. Yes, sir.

Q. And this entrance that the employees use, is in the northeast corner of the plant; that is right, isn't it?

A. That is right.

Q. There is one entrance that all the employees use?

A. Yes.

Q. That is, all the production employees use that entrance, isn't that right?

A. Yes.

Q. And at the time you were working there, and up until—most of the time you were working there, how many time clocks were there, if you know?

A. When I quit, there were three of them.

Q. Most of the time you were working there, how many were there?

A. Two.

Q. Two; as a matter of fact, the third one was installed along in March, wasn't it?

A. I couldn't say just when it was.

Q. You don't know just when?

A. Lately.

Q. It was very lately in the procedure?

A. Yes.

Q. So that during most of the period from April, 1941, and prior thereto, during most of that period there were two time clocks?

A. That is right.

Q. And where were they situated?

A. One was on one side of the shop, and the other on the other.

Q. All right. One was on the north side of the shop, is that right.

A. Yes, sir, and one on the south.

Q. And one was on the south side of the shop?

A. Yes, sir.

Q. And they were situated where, with reference—there were some coat rooms there, weren't there?

A. Yes, there were two coat rooms.

Q. Some other departments went to work the same time your department did, didn't they?
A. Not at the same time.
Q. On that side?
A. Not at the same time, our department was first to go in.
Q. Your department was first to go in?
A. Yes.
Q. And the other departments on that side went in afterwards, is that right?
A. That is right.
Q. And you went in ahead of the dippers and those fellows?
A. Certain times we did, and certain times they went in before we did.
Q. I am trying to get it straight, did you go in ahead of them or didn't you?
A. We did at times.
Q. (By Mr. Nunneley): At times you went in ahead of them, and at times you went in behind, is that right?
A. Yes, sir.
Q. And as you came in you went in to the clock, how far is it from that clock over to where you worked?
A. I would say around 175 or 200 feet, somewhere along there.
Q. As a matter of fact, isn't it nearer 400 feet?
A. No.
Q. You wouldn't say it was around 400 feet?
A. No.
Q. It is 175 feet by the aisleways that you had to travel?
A. Yes.
Q. You say it is only 175 feet to where you work by the aisles that you had to travel?
A. Taking a rough guess, I will say it is 175 to 200 feet.
Q. Do you know how long the plant is?
A. No, I have no idea.

Q. Are you pretty well to the west end of the plant?
A. The east end.
Q. What?
A. The east end.
Q. I mean, your department is pretty well to what end of the plant?
A. The east end of the plant.
Q. You don't know then, just how far it is from the clock over to where you work?
A. Not exactly, no.
Q. Your best judgment is that it is only what, 200?
A. 175 to 200 feet.
Q. 200 feet. All right. When you came in you went over and punched the clock, didn't you?
A. Yes.
Q. To do that, you had to get your card out of the rack and put it in a slot, pull a lever and put it in the rack on the other side; that is right, isn't it?
A. That is right.
Q. And from there you walked over to where you were supposed to start to work, is that right?
A. That is right.
Q. Did you have to do anything by way of getting yourself ready to start work?
A. No, sir.
Q. Change your shoes?
A. No, sir.
Q. Or put on an apron?
A. No.
Q. You didn't put on any gloves, or anything of that sort?
A. No, not before we started. We put them on when we had time.
Q. You put your apron on when you started to work?
A. No, sir.
Q. Did you wear an apron when you worked?
A. Once in a while.
Q. Did you change to different trousers, or anything?

A. No, sir.
Q. Did you wear different shoes while you were working?
A. No.
Q. Wore the same shoes?
A. Yes.
Q. But you did wear an apron?
A. Once in a while we did.
Q. Once in a while; wasn't that the usual practice in your department to wear an apron?
A. No.
Q. Did you use anything to protect your hands?
A. Gloves.
Q. Just gloves; didn't put any finger protectors on, or anything of that sort?
A. No, sir.
Q. You didn't do that?
A. Some of them did.
Q. But you didn't do that, that matter of whether they put something on their hands, that is a matter up to each one, isn't it, to protect their hands themselves?
A. Yes.
Q. You didn't do anything of that sort?
A. No, sir.
Q. Some of the people in your department did, didn't they?
A. The girls did.
Q. The girls did, and the girls went in at the same time you did, didn't they?
A. They followed us in.
Q. The whole group went in there approximately the same time?
A. Yes.
Q. They all went through the clock at the same time, didn't they?
A. Yes, sir.
Q. Going in. Now, how long would you say it would take you from the time you would get from the clock to

get over to where you were supposed to work and get ready to go to work?

A. About a minute or a minute and a half.

Q. A minute or a minute and a half. Did you run over there or walk?

A. I walked.

Q. So that you could walk over there and get yourself ready for work in about a minute or a minute and a half?

A. Yes.

Q. Did you maintain the girls could do it that quick or did?

A. Well, I couldn't say just how long it took them.

Q. What?

A. I couldn't say just how long it took the girls.

Q. You don't know how long it took the girls?

A. No.

Q. It took them longer than it did you, didn't it? . . .

A. I couldn't say for sure.

The Master: Incidentally, where did you leave your coat and rubbers and so forth?

A. We had a coat room in there.

The Master: Was that before you punched the time clock, or after?

A. Yes, it was when we first went in.

The Master: Before you punched it?

A. Yes, sir.

Q. (By Mr. Nunneley): You all lined up and got up to the clock, the whole bunch of you, practically, the girls and men, and you say the men all lined up first?

A. Yes, sir.

Q. And they went through the clock and the girls followed you in?

A. Yes, sir.

Q. You say that that 200 feet, that you could walk over there and get yourself all ready for work in a minute and a half?

A. Yes.

Q. And everybody else had to do the same thing, didn't they?

A. Yes, sir; on our side.

Q. What?

A. The fellows on our line did.

Q. Everybody, including the girls in your department, they all had to get over there and get ready to work, didn't you?

A. We had to get the saggers to the bench before the girls got there.

Q. But you couldn't start the belt before you got there?

A. No, that belt was going before we got in.

Q. But you couldn't start producing until they all got there?

A. That is right.

Q. And how long would you say it took the rest of them to get there?

A. I couldn't say.

Q. You don't know how long it took the girls to get there?

The Master: Your answer is "no"?

A. That is right.

The Master: You nodded your head.

Q. (By Mr. Nunneley): From the time you left the time clock until you were really starting to work, how long did that take? What is your best judgment?

A. From a minute to a minute and a half.

Q. A minute or a minute and a half. You were ready to work, then?

A. That is right.

Q. But the rest of them might or might not be; that is right, isn't it.

A. Yes, that is right.

Q. And to do the operation that you were there for, they all had to be there, or practically all of them; that is right?

A. The fellows on our line that did the same as I did, they had to be there the same time I did.

Q. In other words, all of them had to be there at the same time?

A. Yes.

Q. So that it would be at least seven or eight minutes from the time you punched the clock—

Mr. Lamb (Interposing): Wait a second.

Q. (Continuing): —until you and the rest of your group were in there ready to do some work?

The Master: Just a minute, there is an objection.

Mr. Lamb: I object, your Honor. There is no such evidence. He said it took a minute or a minute and a half from the time they punched the time clock to be in actual operation, actual work. In the first place, it is immaterial, after punching the time clock on the employer's premises, in the employer's behalf, whether it takes a minute or two minutes to get in to work. • • •

The Master: I am not going to stop to thrash this out now because it isn't properly before me. The matter is in issue, and that is all that is necessary.

Go ahead with your question. Your question was, I believe, so that it took seven and a half to eight minutes between the time the time clock was punched and the time that all the male employees were there ready to work.

Mr. Nunneley: Is that right?

The Master: Is that right or isn't it?

A. No, that is not right.

Q. (By Mr. Nunneley, continuing): It is not right?

A. No, sir.

Q. How long did it take for them all to get there?

A. I would say anywhere from a minute to a minute and a half, all the men.

Q. All of them were there within a minute to a minute and a half, all of them got through and got over to the clock within a minute to a minute and a half?

A. That is right. • • •

Q. (By Mr. Nunneley, continuing): So that during the day, at least, it took you a minute to a minute and a half at least to get back to the time clock, too, didn't it?

A. Around that.

Q. Also at noon. That would be four times that it took you a minute or a minute and a half, anyhow?

A. Yes, sir.

Q. Now, if it should turn out that this department of yours is 400 feet from the time clock would you extend your minute and a half any?

A. I wouldn't extend it a bit.

Q. You wouldn't extend it a bit. You never timed yourself, however, did you?

A. No.

Q. Nor measured the distance?

A. Never measured it.

Q. You're estimating that it took you a minute to a minute and a half?

A. Yes, sir.

Q. And that all of the rest of them got there the same time you did every day?

A. About the same time.

Q. Now—

The Master (Interposing): Do I understand—let me get this clear, before you could commence work all the men employees in the department had to be there and on the job?

A. Yes, sir.

The Master: And that, you said before, amounted to about twenty?

A. If they were one short, or something like that, we would still run, but the majority had to be there.

The Master: The majority had to be there?

A. The majority in the department.

The Master: How many short could you have before you would be able to run? Suppose you had fifteen there, could you run with fifteen of the twenty?

A. I think we could.

The Master: Could you run with half of the number?

A. No, I don't think so.

The Master: Do I understand it is not necessary for the women to be there before the men begin their work?

A. The men had to be there first.

Q. (By Mr. Nunneley, continuing): They couldn't be

working very long until the women had to work, didn't they?

A. That is right. The women would come in right behind us.

Q. They would come right behind you. In other words, you shoved the things over there and they filled them, and it went right along in a continuous process, didn't it? You shoved it on to the benches and they filled them, and they kept them going right along; that is right, isn't it?

A. Yes.

Q. And, if the women weren't there you fellows couldn't work over a minute, could you?

A. Work longer than that. We had tables there that we could pull them off.

Q. But, within a minute or two you would be tied up, too, if they weren't taken out of the way, isn't that right?

A. That is right.

Q. So that, as a matter of practical working-out, they all had to be there in order for you to do any amount of work, didn't they?

A. That is right.

Q. Now, do you want to tell this court that all the employees of that department, 85 of them, got in there from the time the time clock was punched, that they were all in there within a minute and a half from the time the clock was opened?

The Master: I think the testimony so far is just pertaining to the male employees.

Mr. Nunneley: Now I am asking him about all of them.

A. I wouldn't say.

Q. (By Mr. Nunneley, continuing): You wouldn't say. Could you give us any idea how long it would be from the time the time clock was opened until they were all in there ready to work?

A. No. I couldn't tell you that.

Q. You don't want to give us any idea. You don't know, is that right?

A. I couldn't say.

Q. You couldn't say. But, there was a period of time between the time that the clock was opened for your department and the time that they could all get down there and be ready to work? That is right, isn't it?

A. Yes, there was a certain amount of time.

Q. Now, ordinarily the clock was opened at what time for your department?

A. 14 minutes to 7.

Q. 14 minutes to 7, so that before that time they couldn't go through the clock, couldn't punch it?

A. That is right.

Q. It wasn't opened?

A. That is right.

Q. So that the whole 85 of them had to go through there between the 14 minutes to 7 and whatever time they actually started to work; the whole 85 of them or practically all of them had to go through, get down and get in their places, and get ready to go to work, didn't they?

A. Yes, sir.

Q. And you say some of the girls did put on things to protect their hands, that is right?

A. That is right.

Q. What else did they do to get ready to work?

A. I couldn't say just what they did.

Q. What?

A. I couldn't say just what they did.

Q. You couldn't say just what they did. And you don't want to say how long that took, do you, for everybody to get down there and be ready to work from the 14 minutes to 7, how long it would be before everybody was there and ready to work?

A. I don't know just how long it took each one of them to get down there ready to go to work.

Q. Could you give us your judgment how long it would be before they would all be there so that you could start, is what I am getting at?

A. No, I couldn't do that, either.

Q. You couldn't do that either. So that it is true that

so far as actual working is concerned you didn't work until they all got down to the department, or practically all of them as you have indicated to the Master? That is right, isn't it?

A. Yes, we did. We—when we got in there the belt started going. We had to be there to get them saggers off, or get them to the benches, either way.

Q. Didn't you just tell us you couldn't work more than a minute or two, at least, unless everybody was in there? Didn't you just tell us that?

A. I said we could work. Not very long, but we could work.

Q. I asked you didn't you just tell us you couldn't work more than a minute or two unless they were all in there ready to work?

A. Yes.

Q. Yes. That is true, too, isn't it?

A. A minute and a half to a minute, something like that.

Q. Yes. That is right. And, isn't it true that it was 7 o'clock generally before they were all in there?

A. No.

Q. And ready to work?

A. No.

Q. That isn't true?

A. We were all working by 7 o'clock.

Q. You were all working by 7 o'clock?

A. Yes, sir.

The Master: How much before 7 were you all working regularly?

A. I couldn't say. Production was started. The saggers was being loaded I would say around five or six minutes to 7.

The Master: Do you have a wrist watch?

A. Yes.

The Master: When you say that are you just guessing at it or have you looked at your watch from time to time on the job?

A. No, I never wore a watch. You couldn't wear a watch.

The Master: Was there any clock in the department?

A. Not that you could see. • • •

Q. (By Mr. Nunneley) There is a whistle that blows there generally five minutes to 7, isn't there?

A. I couldn't say if there is; there is a 7 o'clock whistle.

Q. Well, there is a whistle blows twice, or used to, when you were working there anyway it used to blow twice, didn't it? • • •

A. I don't know.

Q. (By Mr. Nunneley) You don't know; you worked there all those years and you don't know whether the whistle blew in the morning twice, is that right?

A. That is right.

Q. It blew once, didn't it?

A. At 7.

Q. You know that?

A. Yes.

Q. So that you knew when it was 7 o'clock?

A. Yes, that is right.

Q. Now, do you want to tell us it didn't blow at 5 minutes to 7 every morning, too?

A. I wouldn't tell you it didn't and I wouldn't tell you it did.

Q. You wouldn't say it didn't and you wouldn't say it did. To the best of your judgment then it was 6 or 7 minutes to 7 when you all got to work, is that right?

A. When we started loading the cars, yes.

Q. That is right, and then when you left at noon you all quit at the same time?

A. All the fellows, yes, in our department.

Q. And the girls, everybody in your department, you all left at the same time?

A. Yes.

Q. And you all went over to the time clock, didn't you, to go out?

A. Yes.

Q. And punch your way out?

A. Yes, sir.

Q. (By Mr. Nunneley): How long did it take you to get over to the clock?

A. I will say a minute or a minute and a half.

Q. For you?

A. For me.

Q. And all the rest of them would go on out too, if they wanted to go out?

A. That is right.

Q. And coming back at noon, after your noon hour, the time that you had off at noon, you had to do the same thing that you did in the morning, didn't you?

A. Yes.

Q. What time did you generally go out at noon?

A. There was different times; we sometimes go out before 12 and sometimes after 12.

Q. It would depend on how the work was progressing?

A. That is right.

Q. Those times varied?

A. That is right.

Q. And there was a time specified when you had to come back?

A. Yes.

Q. When you came back you had to start up just the same as you started up in the morning again, didn't you?

A. Well, yes, we did.

Q. Yes, and so it would be the same length of time after lunch that would elapse between the time you punched the time clock and the time you started to work, as in the morning; that is right, isn't it, approximately; that is right, isn't it?

A. About the same.

Q. Yes. And then of course in the evening when you got through work, whatever time your place closed up or stopped, did everybody go over to the clock then?

A. As soon as the belt was stopped.

Q. As soon as your belt was stopped everybody went over to the clock?

A. Yes, sir.

Q. And went out?

A. Yes.

Q. Went home. Did you wear the same clothes to work that you wore home?

A. Yes, sir.

Q. So that when you came to work in the morning you didn't have to change any clothes, is that right?

A. Just hang up my coat.

Q. Just hang up your coat, and when you left all you had to do was put it on?

A. That is right.

Q. Or your overcoat, or whatever you happened to be wearing?

A. That is right.

Q. You were not required to change any clothes or put on any uniform?

A. No.

Q. Or wear any kind of equipment; you could wear whatever you wanted to?

A. That is right.

Q. Now, witness, you said the other day that every Friday, as I recall it, nearly every Friday you stayed after the girls and the rest of them had left and did some work?

A. That is the boys in our department did.

Q. The boys in your department. How many of you would that be?

A. We all had to stay but four boys, there was four in our line and three wadders, we all had to stay about the same length of time, fifteen minutes to half an hour.

Q. And you say your practice on that, on each of those occasions you would go and punch out at the same time the women folks did, is that right?

A. Yes, most of the time we did.

Q. And later then you would go back in and do the clean-up and you wouldn't put that down at all?

A. No, sir.

Q. You wouldn't mark that, and is that what you did during all the time you worked there?

A. Every Friday night.

Q. Every Friday night, and I think you said this morning that Rita Schulte worked there with you in that department?

A. Yes, she did.

Q. Right close to you?

A. Yes, she did.

The Master: Witness, you have just said that most of the time on Fridays you first punched the clock and then went back and did the clean-up work and then went out. Was there some of the time you waited until the work was done before punching that?

A. Yes, there is times we did.

The Master: How was it determined which you would do? How did you decide whether you were going to punch the clock first?

A. We wasn't supposed to.

The Master: I beg your pardon?

A. We wasn't supposed to punch.

The Master: You weren't supposed to punch at what time?

A. After we were through. We were supposed to do the work.

The Master: Who told you that?

A. The foreman.

The Master: What was his name again?

A. Engleman, Herman Engleman. * * *

The Master: Can you give me, roughly, about the percentage of the occasions on which you punched the clock after you did this work, as compared with the number of times you punched it before?

A. We punched it before, most of the time.

The Master: How did it happen on certain occasions you punched the clock afterwards?

A. We just punched, that is all; just didn't go out and punch it.

The Master: Was the foreman around?

A. Well, he was around, but not around us. He was around the place.

The Master: Didn't the foreman check up to see whether you went out to punch the clock?

A. No, I don't believe he did.

The Master: He just told you you should go out and punch it first?

A. Oh, yes, that was the understanding.

The Master: He never checked up to see whether you complied with his instructions?

A. I don't believe it.

Q. (By Mr. Nunneley) Now, Mr. Trombley, your weeks were figured from Wednesday through Tuesday all the time, weren't they?

A. You mean the pays?

Q. Yes.

A. Yes, that is right.

Q. From Wednesdays through Tuesdays, then you were paid on Friday?

A. That is right.

Q. You worked Wednesday, Thursday and Friday, and Monday and Tuesday, that is the way the weeks were set up all the while on the pay cards?

A. That is right.

Q. And it is true, isn't it, that each day when you came in these cards, I will show you one of them, Exhibit "H," when you came in in the morning you took your card out of the rack, didn't you?

A. Yes, sir.

Q. And you put it in a slot in the clock?

A. Yes.

Q. Pulled the lever and put it in a rack on another side?

A. Yes.

Q. That is right, under your numbers; they are all numbered?

A. Yes.

Q. And it is also true, isn't it, that each day by noon the figures that are in red down the side were on the card, isn't that true?

A. That is right.

Q. And you also knew that that was the figures of hours worked that the company computed for you too, didn't you? * * *

A. Yes.

Q. Did you meet Mr. Doll around the plant? He used to be around the plant pretty near every day, didn't he? Senior, I am talking about?

A. Yes, we seen him.

Q. Come on through, talked to different people, wouldn't he?

A. He would stop once in a while. * * *

Q. (By Mr. Nunneley) So that he occasionally had come into your department, practically would be in there every day or two, wouldn't he?

A. About every other day.

Q. About every other day or so he was in there, and at these meetings at times on a good many occasions, he told you folks if you had any complaints to make, he would be glad to receive them, didn't he?

A. I believe he did.

Q. What?

A. I believe he did.

Q. Yes. And, he was around right in your department where you could talk to him most any day, couldn't you? Every other day anyhow; that is true, isn't it?

A. Yes, we talked to him.

Q. You never made any complaints to him, did you?

A. I didn't think it was safe.

Q. Either about your wages, or hours, or anything else; isn't that right?

A. No, sir, I did not.

Q. In spite of his assurances and requests that if you had any you should make them to him, isn't that right?

A. That is what he said.

Q. That is what he said. And, he repeatedly assured you that he wanted you to make them if you had any; that is true, isn't it?

A. He said that.

Q. What?

A. He said it.

Q. Yes. You yourself never made any complaint about the way your hours were figured, or your pay, or anything connected with it, did you?

A. I didn't dare to.

Q. You didn't dare to. You thought he wouldn't keep his word, is that right?

A. That is right.

Q. That is right. You suspected that he wouldn't keep his word, so that you didn't talk to him for that reason?

A. No.

Q. Now, this exhibit, showing you Exhibit H, that is your time card— . . .

Q. Exhibit 3-H. That is your time card, is it not (handing exhibit to witness)?

A. Yes, I believe it is.

Q. And for the pay that would begin or end November 14, 1939, is that right?

A. That is right.

Q. That is right. Now, on Friday of that day, will you look at it and see what time you checked out?

A. 4:41.

Q. 4:41. Now, isn't it a fact that each—that you boys on this clean-up business every other week half of you stayed, and the other half left? Now, isn't that the fact?

A. No, it is not.

Q. That isn't the fact?

A. No, sir.

Q. Some weeks you didn't stay; that is right, isn't it?

A. No, sir. Every Friday night we had to clean that.

Q. Did you say every Friday night, that is what I am asking you?

A. Yes, sir, I did.

Q. You are telling the Court you stayed every Friday that you worked; every single one?

A. Yes.

Q. You stayed every single Friday, and there was no division between the boys in your group. Part of you did it one week and part did it the next week?

A. No.

Q. No such thing as that. Now, I show you Exhibit 5, a time clock card headed, "Rita Schulte," and ask you if you can tell from that card, what time she checked out on that Friday (handing exhibit to witness)?

Mr. Lamb: May he be asked to show what the time card shows?

The Master: What time does the time card show for Rita Schulte, on that day?

A. 4:14.

Mr. Nunneley: 4:14?

The Master: Is that the same day, as the 4:41?

Mr. Nunneley: Yes.

Q. (By Mr. Nunneley) They are both headed November 14th card, aren't they?

A. Yes.

Q. That is the last Friday on the card. Now, I will ask you on the first Friday on your card what time you punched out (handing exhibit to witness). The first Friday on the same card, what time did you punch out?

A. 4:25.

Q. 4:25. I will show you the Rita Schulte card, and ask you that same Friday what time does it show she punched out (handing exhibit to witness).

A. 4:01.

Q. 4:01. In other words, at least on that Friday you would say you had punched the clock, didn't you?

A. Yes.

Q. On that one?

A. Yes, I did.

Q. And you punched it, after you cleaned up, wouldn't you say?

A. Yes, I would say that.

The Master: Let me see that, please?

(The exhibit above referred to was handed to the Master.)

Q. Now, I will show you Exhibit 3-I, and that is also one of your cards, and that week for some reason or other, you worked on Saturday,-I believe. Will you look and see (handing exhibit to the witness). The November 28th card; because of being off Thanksgiving, you worked Saturday, isn't that right?

A. That is right.

Q. And you do the work on Saturday that normally you do on Friday, is that right?

A. That is right.

Q. Now, what time does the card, Exhibit 3-I, show that you punched out on Saturday of that week?

A. 4:29.

Q. 4:29. And I will show you Exhibit 5-A, and what time does the card show that Rita Schulte punched out on Saturday of that week?

A. Four o'clock.

Q. So that again that week you must have punched your clock after your clean-up; that is right, isn't it?

A. Yes.

Q. Now, I show you Exhibit 3-I for the next week of that same card, and what time did you punch out on Friday?

A. 4:48.

Q. 4:48. And I will show you Exhibit 5-A, and ask you what time Rita Schulte appeared to punch out?

A. 4:28.

Q. 4:28. So that again you must have punched out after your clean-up; that is right, isn't it?

A. It must be.

Q. Now, I will show you Exhibit 3-J, card of December 5th, and ask you if on that date you again worked on Saturday?

A. 2:47.

Q. And I will show you Exhibit 5-B, and ask you at

what time Rita Schulte punched out, who worked along with you?

A. 2:27.

Q. So again you have punched out after your clean-up, didn't you?

A. Yes, according to them cards.

The Master: Incidentally, is this Rita Schulte one of those for whom a designation has been filed?

Mr. Nunneley: I believe so. I believe she is one of those for whom a designation has been filed.

Mr. Cooper: Yes, that is right.

Q. (By Mr. Nunneley) And at the end of that week, it is shown on this same card, on Friday, Exhibit 3-J, what time did you punch out?

A. 4:47.

Q. And showing you Exhibit 5-B on that Friday, what time did Rita Schulte punch out?

A. 4:25.

Q. So again you stayed after, and made your time clock card record, didn't you?

A. According to the cards.

Q. I will show you Exhibit 3-K, and ask you what time you punched out on the first Friday that is shown on that one, being the—

A. December 12.

Mr. Nunneley: December 12, 1939.

A. 4:38.

Q. (By Mr. Nunneley): 4:38. I don't know whether you can tell from this one what time Rita Schulte punched out. There seems to be a mark there. It is perhaps indicated.

A. It is either 4:09 or 4:15, according to that; either one. * * *

Q. (By Mr. Nunneley): If it is either 4:09 or 4:15, you stayed and did your clean-up afterwards, as far as the record shows?

A. Not necessarily.

Q. What?

A. Not necessarily.

Q. Not necessarily?

A. No. If we had saggers on the line, and she was through, she went out. We had to stay there until the saggers were cleaned up.

Q. You had to stay there until the saggers were cleaned up?

A. That is right.

Q. I see. You want to say now that that doesn't indicate she quit before you did? • • •

A. It is possible. If she got through, that doesn't mean she is working with me. I got eight benches to take care of. She is on some other eight. Even if she is through, I have still got to wait until mine are cleaned up.

Q. You have got to wait there until yours are finished?

A. That is right.

Q. All right; what girls worked on your benches?

A. There were a lot of them.

Q. Give us the names of them so we can see about this?

A. Helen McDonald, Beatrice Bok; I can't think of any more right offhand.

Q. You can't think of any more?

A. No.

Q. Just two. You did tell us this morning that Rita worked right beside you, right there close to you; we asked you about it?

A. I said she was working with me; all the girls are working with me on that line. ■ ■ ■

Q. On Exhibit 5-C, being the Rita Schulte card, on the second Friday on there, what time does it indicate she checked out?

A. 4:31.

The Master: What is the other?

Mr. Nunneley: 4:53.

The Master: 4:53 for him.

Q. (By Mr. Nunneley) So again you stayed after she did, didn't you?

A. Yes, sir.

Q. And if the cards of a good many of the girls showed they checked out ahead of you, that would show you did the cleaning, wouldn't it?

The Master: Let's get this witness' testimony on that clear. If Rita Schulte punched out before, considerably before you did, say 20 or 25 minutes before you did, would that indicate that that additional time was spent by you in doing cleaning?

A. No.

The Master: What else could it have been?

A. We can't clean that belt until it stops, it is a long belt, it runs down the length of the C. R. Department, then there is the bench, and they shift over the other belt, this other belt carries them all the way back to the cars, and this line has to be empty before the belt stops.

The Master: So you have to wait until the line gets empty—

A. (Interposing) Before we can clean them. And, if we fill up our benches, and waited for the girls to put them out, and for the belt to get all done, then did our work and punched out, it would be a lot later than the cards indicate.

The Master: How much later, how long would it take to get all that done?

A. It takes half an hour to clean the belt alone.

The Master: How long does it take to clear the belt?

A. About a good ten minutes, after they stop unloading.

Q. (By Mr. Nunneley) Now, let's see, in reference to Rita Schulte, there is one belt there, or two?

A. There are two belts.

Q. Two belts?

A. That we were working on.

Q. That you work by, two belts, and the ware, the stuff, whatever it is, comes along on one belt, and is passed over to the girls and they fill it and put it off on the other belt?

A. That is right.

Q. They work between the belts?

A. That is right.

Q. (By Mr. Nunneley) So that what you want us to understand now is that Rita Schulte might have quit before you did, and that wouldn't indicate that you were cleaning up?

A. No, it wouldn't.

Q. If it developed that most of the girls in that department quit before you did, what would that show?

* * *

SUMMARIZE LINE 11, PAGE 256, THROUGH LINE 11, PAGE 260, AS FOLLOWS:

"Counsel for plaintiffs objects."

* * *

The Master: Let me ask you this, witness; did the girls and the men go out and check out at the same time in the afternoon?

Mr. Lamb: On Friday afternoons.

The Master: On Friday afternoons.

A. During the week, at the same time the belt stopped there, we all went home.

The Master: Now, on Friday afternoons, what did you do?

A. On Friday afternoons, we punched out when we got through work, and went back and cleaned up.

The Master: The girls punched out, too, and on Friday afternoons when they got through working?

A. That is right.

Q. Did you go out at the same time and punch out?

A. Not necessarily. If they go before I go, they go and punch out. I punch out when I go out.

The Master: Why is there a difference between Friday and the other days of the week?

A. Because that is the time we clean up the belt.

The Master: You say the cleaning is something you do afterwards, and doesn't have anything to do with the time you punch out because you punch out before you clean?

A. Yes.

The Master: Then, why is it you have a different time that you punch out with reference to the time the girls punched out on Friday, than on other days?

A. Because when it comes time to quit during the week, they stop the belt. The benches are full and everything. In the morning you just start right up and go to work, and when it comes time to quit, they stop the belt again, no matter where the saggers are.

On Friday night they all have to be pushed off the belt, and the girls have to fill them.

Mr. Lamb: On Friday, there is an additional operation of taking the things off the belt?

A. Yes. It is cleaned up. The saggers have to be taken off.

The Master: Before you start cleaning?

A. Yes, and loaded on the benches.

Q. So that the best Rita Schulte could get done ahead of you would be ten minutes anyhow?

A. It could be that, it could be less.

Q. It could be less. But, I say; that is the most she could get done ahead of you?

The Master: What is your answer?

A. About ten minutes, I would say.

Q. (By Mr. Nunneley) Now, the fact is, most of the people don't leave that belt until it stopped, isn't that right?

A. No.

Q. On any night?

A. On any night when that belt stopped, they all left; didn't leave before.

Q. They didn't leave before?

A. No.

Q. On Friday night the belt ran until it was cleared, you say?

A. That is right.

Q. And that was how long?

A. I would say ten minutes.

Q. Ten minutes. So you can't tell, of course, from this card, whether the belt was cleared when Miss Schulte left or not, can you?

A. I don't believe I can.

Q. You can't tell. And no one else can, that is right, isn't it?

A. I don't think so.

Q. But it would be true that if most of the girls left, the belt must have been cleared, isn't that right? • • •

A. The belt wouldn't be cleared until all the girls left to punch out. They have to stay there and fill their saggers, push them out on the line, and then they go. • • •

Q. I will show you Exhibit L; what time did you go out on Friday, that is December 31st? • • •

The Master: Exhibit 3-L, December 31, 1939. • • •

A. 4:55.

Q. (By Mr. Nunneley) 4:55. Did you work on Saturday that day, the last week on the card?

A. I don't believe I did.

Q. You don't believe you did? I show you the Rita Schulte card; it appears that she did, doesn't it?

A. Yes, she did.

Q. Saturday would be the last work day of that week?

A. That is right. • • •

Q. (By Mr. Nunneley) I will show you Exhibit 3-N, being the week of January 23rd, I think it is, 1940, and ask you what time you checked out on Friday of the first week, as shown on that card? • • •

A. 4:46.

Q. 4:46. And, I will show you Exhibit 5-N, and ask you what time it appears that Rita Schulte checked out on the first Friday?

A: 4:25.

Q. 4:25. So again she gets out 15 or 20 minutes ahead of you; that is right, isn't it?

A. That is right.

Q. Now, on Exhibit 3-N, what time did you check out on the second Friday?

A: 4:35.

Q. And she checked out when?

A. 4:37.

Q. For once she got out after you, didn't she?

A. Yes.

Mr. Lamb: Temporarily she was out—or temporarily you were out, I should say.

Q. (By Mr. Nunneley) Well, you don't need to tell him the story, I don't think.

Exhibit 3-O, your time clock card, week of February 6, 1940, what time did you check out?

A. 4:29.

Q. I show you Exhibit 5-O; what time does that show that Rita Schulte went out?

A. 4:04.

Q. So again she got out there ahead of you?

A. That is right.

Q. And the same, Exhibit O, in the second week, what time did you check out?

A. 4:56.

Q. I show you Exhibit 5-O, Rita Schulte; what time did she check out?

A. 4:34.

Q. (By Mr. Nunneley) Would there be anything that Rita Schulte could be doing there, after you got through?

A. Yes, she could be filling saggers.

Q. She could be filling saggers after clean-up and everything?

A. No, not after the cleaning had been done.

Q. If she went out ten minutes after you, would that mean anything to you?

A. No, not if the belt is all cleaned, it don't.

Q. What is that?

A. If the belt is all cleaned, it don't.

Q. If the belt is all cleaned, it don't. So, if she went out ten minutes ahead of you, that doesn't mean anything?

A. Not to me.

Q. Not to you?

Mr. Lamb: It means she went out ten minutes ahead of him.

Q. If she went out ten minutes after you, what does it mean? Nothing at all?

A. If the belt is all cleaned, I am done then. I don't know who stays there, or why.

Q. So, if she went out after you, the belt is all cleaned and everything?

A. Yes.

Q. Or else you quit before cleaning up. She wouldn't be there loading saggers after the belt was cleaned, would she?

A. No.

Q. So, if she went out after you did, it would indicate that the belt was all cleaned and everything else, wouldn't it; if she went out after you did?

A. Yes, it would. • • •

Q. (By Mr. Nunneley) Now, I will show you Exhibit 3-P, and ask you if you can tell from that what time you went out on the first Friday shown on that one, being the one of March 5, 1940 (handing exhibit to witness)?

A. It looks like 4:43.

Q. 4:43. And, Exhibit 5-O, what time would you say— • • •

A. 4:52.

The Master: 4:45 and 4:52.

Mr. Nunneley: 4:43, I think he said.

The Master: 4:43 and 4:52. How do you explain that? What would your explanation be, if any, for her having punched the clock nine minutes from you on this date?

A. Well, if the belt was cleaned—I couldn't say what it was, but if I got through my work before she had her saggers through, I just punched out before she did, that is all. You see, she could have been stuck with a sagger, almost anything could have delayed her. • • •

The Master: If Rita Schulte was working on benches that you weren't pushing saggers to, she might get through with her work shortly before or shortly after you?

A. That is easy, yes.

The Master: And would you and she each go and punch the time clock as soon as you were through, without waiting for the rest of them to get through?

A. Oh, yes, if we had all our saggers cleaned up, we would be free to go and punch out, but as long as we had saggers, we had to put them in first before we even left the belt.

Q. (By Mr. Nunneley) You had to put the saggers on the bench before you left the belt?

A. That is right. We had to see they was all cleaned up.

Q. It would take the girl a minute or two to fill a sagger?

A. I couldn't say just how long it took.

Q. It is a very short time, isn't it? They fill a sagger, they fill a lot of them in a day, that is right?

A. Oh, yes.

Q. I see. I will show you Exhibit 3-R being your card for March 19th, and asked you what time you checked out on the first Friday, shown on that card?

A. 4:54.

Q. 4:54. By the way, that week, how many hours did they give you credit for?

A. 8¾.

Q. Now, I will ask you what time Rita Schulte checked out according to that Exhibit 5-R, the same Friday?

A. 4:28.

Q. Now, on your second Friday on that card, Exhibit 3-R, what time did you check out?

A. 5:07.

Q. And what time did Rita Schulte check out?

A. 5:08.

Q. So that time she didn't get out of there until after you did, did she?

A. That is right.

Q. I show you Exhibit 3-S, period of April 2, 1940, the first Friday shown on that card, when did you check out?

A. 5:07.

Q. And Rita Schulte, on Exhibit 5-S, the first Friday?

A. 4:39.

Q. And on Exhibit 3-S, on the second Friday on your card, when did you check out?

A. 4:53.

Q. And Exhibit 5-S, when did Rita Schulte check out?

A. 4:32. • • •

Q. Well, you didn't always punch in at 14 minutes to, did you?

A. Most of the time we did. There were a few exceptions we didn't. • • •

Q. In fact, the clock wasn't opened until 14 minutes, was it? You couldn't get through there until then?

A. No, you couldn't.

Q. That is right. So that that is the earliest you could possibly get in, is that what you mean?

A. Unless we had orders to come in earlier.

Q. Unless they opened the clock earlier, but I say if the clock was opened at 14 minutes to 7 or 6:46, did you ever punch in at 6:45, for instance, or did you ever punch 6:45 ahead?

A. I might have.

Q. You couldn't, could you?

A. What?

Q. You couldn't very well, if the clock wasn't open, could you?

A. The clock is not locked. There is just a foreman standing near there. There might have been a time I punched in at a quarter to.

Q. Somebody standing there to see you don't punch in more than 14 minutes ahead of the next hour, or quarter hour, or half hour, isn't that right?

A. That is right.

Q. It isn't open to do it? • • •

Q. There was somebody standing there so that you were not permitted to punch the clock more than 14 minutes to the hour; that is right, isn't it?

A. That is right.

Q. Whether it was locked, or however it was done?

A. That is right.

Q. So that you couldn't do it more than 14 minutes to, we will say, to 7, or whatever the time happened to be; 14 minutes to the next quarter hour; that is right, isn't it?

A. That is right. . . .

Q. (By Mr. Nunneley, continuing) What you meant to say is that you always punched in, or as a general rule you punched in at 14 minutes to 7 or some time between then and 7?

A. That is right.

Q. That is what you mean to say. And, you don't mean to pretend to tell us that you always went in at 14 minutes to 7, do you?

A. Unless we had orders to come in other times.

Q. Well, now, which is it? Now you are changing.

A. I am just telling you. Our regular time for starting was 14 minutes to 7. If we had orders to come in at 6:31 or 7:01, we had to do it.

Q. The time to get there was 14 minutes to 7?

A. That was our regular starting time.

Q. That was your regular starting time. All right, now, we will take, here is Exhibit 3-T. What was the regular starting time on the first Wednesday that is shown on Exhibit 3-T?

A. 6:49 is the time I started.

Q. You mean that is the time you punched the clock?

A. That is the time I punched the clock. . . .

Q. Now, what was the starting time that you say the foreman had told you for that day, if you can tell us?

A. I can't say.

Q. You can't say whether you were late or early, is that right?

A. That is right. I can't tell you. It is too long ago.

Q. Too long ago. And the next day, is that the same situation, the next day, on the same record?

A. 6:49.

Q. You don't know whether you were late or early that day either?

A. No.

Q. Now, as a matter of fact, the foreman never gave you any starting time for 6:49, did he, that you know of?

A. Oh, no.

Q. No. So that that 6:49 on those two days shown on that particular card doesn't indicate the time you started or the time the foreman told you to start, do they?

A. According to that, no.

Q. According to that, no. That is right. And on the following day, Friday, in the same week, on the same card, Exhibit 3-T, is that the same situation?

A. 6:48.

Q. Now, can you tell us from the best of your recollection what the starting time was on those days?

A. 6:45.

Q. 6:45. So on those days—

A. (Interrupting) Or 6:46.

Q. What?

A. 6:46.

Q. 6:46. So on those days you were late, a couple of minutes, getting through the clock, weren't you?

A. Well, I was later than I usually was.

Q. And, as a matter of fact, 6:46 was the time that the clock was open or the foreman let the people go through, whatever you might call it, isn't it?

A. Yes, that is right.

Q. And you got through a couple minutes after that, or 3 minutes that shows there?

A. Yes.

Q. Then you had to go over to your place of employment and all the rest of them did before you could start; that is right, isn't it?

A. That is right.

Q. And that same situation is true as to every day shown on Exhibit 3-T?

A. That is right.

Q. So that you don't know what time you started on those days, do you?

A. I know the time I punched in.

Q. But you don't know the time you started to working; that is right, isn't it?

A. Not exactly, no. • • •

Q. (By Mr. Nunneley) Witness, I will show you Exhibit 3-T, being your card for April 16, 1940, and on the first Friday that is shown on there what time did you go out, check out?

A. 4:41.

Q. And 5-T for Rita Schulte, what time is that?

A. 4:42.

Q. She checked out after you at that time, didn't she?

A. That is right.

Q. What would be the explanation that you would make of that?

A. I got through before she did.

Q. You got through before she did, and went on out, that is correct, isn't it?

A. That is right, I checked out.

Q. And on the second Friday on Exhibit 3-T, what time did you check out?

A. 5:09.

Q. And Rita Schulte?

A. 5:10.

Q. That shows that you again got through before she did anyway?

A. That is right.

Q. Taking both of these, Exhibit 3-T being your card, and Exhibit 5-T being Rita Schulte's card, will you look them over and see whether or not it is true that on every day on those cards you and Miss Schulte got through within a minute of the same time?

A. There is a couple of days there is two minutes' difference.

Q. Well, maybe I overlooked it. We will say every day you got through within two minutes of the same time, is that correct?

A. That is correct.

Q. On those two cards, and will you also look at Exhibit 3-T and look at your starting time of that day, of all the days that are mentioned on the exhibit there, both weeks, and tell us what your starting time was, if you can, on the days shown on that card?

A. 6:49, the time I punched in.

Q. I didn't ask you that; now, you know I asked you what the starting time was?

A. 6:46, supposed to punch in.

Q. Those days you were three minutes late?

A. That is right.

Q. Now, what time, let's put it this way, what time would you say you started to actually work back at your station on those days?

A. Around 6:51. . . .

The Master: I see. Did you ever get criticized by your foreman for coming in late?

A. No, I don't believe I have.

Q. (By Mr. Nunneley, continuing) You actually started provided the others were there ready to work, didn't you, at the time you just stated?

A. I can start any time I get in there if the others are there or not. If the belt is going I have to get them saggers there whether the girls are there or not.

Q. After you get the two saggers there, whether the girls are on the bench or not, then what happens? What if the girls are not there?

A. I throw them on the floor.

Q. You throw them on the floor?

A. That is right.

Q. You pile them up on the floor and have to pick them up, so that if none of the girls are there you want to tell us you keep on throwing the saggers on the floor?

A. That belt keeps on going. If the belt would stop, I have to stop.

Q. As a matter of fact, the belt is stopped if the girls aren't there, isn't that right?

A. No, not right away.

Q. How long would they let it run if the girls weren't there?

A. I would say two or three minutes.

Q. Two or three minutes. Within a couple of minutes. So that people have to be there to take it off, otherwise the whole thing is useless, whatever you would be doing; that is right, isn't it?

A. Oh, yes. You have to pull them off the floor and pick them all back up again.

Q. That is right. You said you had never been reprimanded or punished for being late, is that right?

A. I don't believe I have.

Q. The foreman was insistent that everybody be there on time, though, wasn't he?

A. You were supposed to be there on time.

Q. You were supposed to be there on time. You were supposed to be there so that practically all of you could start working at once; that was right, too, wasn't it?

A. That is right.

Q. By the way, do you recall that you testified yesterday that you always went in at 14 minutes to?

A. I believe I did.

Q. Do you want to change that in any way?

A. No. As a general rule we start at 14 minutes to.

Q. I will show you Exhibit 3-U. Is there more than one day out of those two weeks shown on there that you got in at 14 minutes to (handing exhibit to witness)?

A. There is one day punched on 7:01 here.

Q. That is the only one you were within the 14 minute class, anyway?

A. That is the only one I can see.

Q. (By Mr. Nunneley, continuing) Now, I show you Exhibit 3-U and ask you on the first Friday shown on Exhibit 3-U what time you checked out (handing exhibit to witness)?

A. 5:35.

Q. And I show you Exhibit 5-U and ask you on the first Friday shown there what time Rita Schulte checked out?

A. 4:54.

Q. 4:54. And on Exhibit 3-U on the second Friday what time did you check out?

A. 5:03.

Q. And Exhibit 5-U, what time did Rita Schulte check out?

A. 4:40.

Q. On each of those days you were credited with more time, too, in the hours computed on there than she was, weren't you? • • •

A. That is right.

Q. (By Mr. Nunneley) And, on all the other days shown on Exhibit 3-U and Exhibit 5-U, you and Rita Schulte got through and checked out within three or four minutes of each other, didn't you?

A. Yes.

Q. As a matter of fact, the only day that she has ever shown up in any of these cards to get out ahead of you very much is on Friday, is that right? • • •

A. That is right.

Q. And on each of the days shown on those two cards, Exhibit 3-U, and Exhibit 5-U, you went in after she did, is that right?

A. That is right.

Q. (By Mr. Nunneley) Now, you testified this morning that you had to be there before the girls did, in order for them to start to work, didn't you?

A. I believe I did.

Q. Yes. Now, in these days you, at least, weren't there before this girl was, were you?

A. No.

Q. And she couldn't have started to work until after you got there, could she?

A. It is possible she could have. There could have been empty saggers on her bench.

Q. If she happened to be in some other group?

A. That is right.

The Master: What days were you asking about? Was that restricted to Monday?

Mr. Nunneley: This was a whole week.

The Master: A whole week?

Mr. Nunneley: Two weeks, Exhibit 3-U as to Earl Trombley, and Exhibit 5-U as to Rita Schulte.

The Master: Every day Rita came there first.

Mr. Nunneley: Let me see now. I better check them. Yes, according to these, every day she came there first, isn't that correct (handing document to witness)?

A. That is correct.

Q. And on one day she came at 6:47 and you came at 7:01, is that right?

A. That is right.

Q. Was that a day when—when would you say the starting time was on that day, according to that card?

Q. (By Mr. Nunneley) What would you say the starting time was on the days shown on Exhibit 3-U being Earl Trombley's card, and Exhibit 5-U, being Rita Schulte's card, both for April 30, 1940?

A. I would say the starting time was 6:46, according to Rita's card. * * *

Q. (By Mr. Nunneley) And, isn't it true that according to those cards, both of you were late every day during the period? If that was really the time you were supposed to start to work?

Mr. Lamb: Not late, 6:46.

The Master: He said the starting time was 6:46.

Mr. Nunneley: They were late every day if the starting time was 6:46.

A. Yes, if you want to call it late.

Mr. Nunneley: Well, you aren't trying to figure us down to the last minute in paying you, are you?

Mr. Lamb: We certainly are.

Mr. Nunneley: All right, I just wanted to know.

The Witness: I just wanted to say we started at 7 o'clock.

Mr. Lamb: We certainly are. We would like to be paid according to the law—

Mr. Nunneley: (Interposing) I expected that answer from you.

Mr. Lamb: (Continuing) —if it isn't asking too much.

The Master: Just a minute. Let me ask you this question; you say the whole department is lined up in front of the time clock in the morning when you come in?

A. Yes, sir.

The Master: That includes men and women?

A. Men and women.

The Master: Pardon?

A. Men and women.

The Master: How long do you estimate it takes for all of them to punch in?

A. All of them?

The Master: Yes.

A. Roughly I would say two or three minutes.

The Master: If the foreman let the first one start in at 6:46, when would the last one be punched in?

A. I would say 6:48. • • •

Q. All right. Now, witness, on this card for the pay ending April 30, 1940, Exhibit 3-U, the first Tuesday on there, you got in, according to that, at 7:01, didn't you?

A. That is right.

Q. And you testified from the card a few minutes ago that the starting time during that period must have been 6:46, didn't you?

A. That is right.

Q. You worked all day that day, didn't you? You weren't sent home, were you?

A. No.

Q. And you weren't sent home on any of these other days that we have shown here so far that you were late, according to your theory?

A. I wasn't late.

Q. You weren't late; when you were there some time after 6:46, you weren't late?

A. Our time wouldn't start until 7 o'clock. You wasn't considered late until after 7:00.

Q. Your starting time was 7 o'clock; that is right, isn't it?

A. That is the time the pay started.

Q. That is the starting time. And you knew you weren't going to get paid until 7 o'clock, that was the time to begin work, isn't that right?

A. That is right.

Q. For which you got paid?

A. That is right. • • •

Q. (By Mr. Nunneley) I show you Exhibit 3-V, and Exhibit 5-V. You can look at the items on the cards. And I ask you if it isn't true that on all of those occasions excepting one, you went in after the woman employee, Rita Schulte, instead of before as you have testified?

A. (After examining exhibit) That is right.

Q. So that when you testified that you always went in first, and so on, ahead of the women, it shows by these cards that that was a mistake on your part, is that right?

A. There is no mistake. I was supposed to be ahead of the women. If I got a little before them—I am supposed to be there before they are.

Q. I say, if you are not you get in behind them, don't you?

A. That is right.

Q. And on the last several sets of cards we have shown you you have been behind them, haven't you?

A. Yes, according to them, yes.

Q. And it is also true that on both Fridays on Exhibit 3-V and Exhibit 5-V, being your card and Rita Schulte's card, respectively, you didn't come out until a considerable period after she did?

A. That is right, the last Friday of the pay.

Q. Can you explain how it is that the only day of the week, from these cards, that it appears that this woman got through ahead of you happens to be on Friday and it does happen on every Friday? • • •

A. During the week we all get out when the belt stops.

Q. That is right.
A. And if I am ahead of her, I am ahead of her.
Q. O. K.
A. On Friday night if she is done before I am done she goes out and punches, and I am done before she is I go out and punch.
Q. Yes.
A. There you are.
Q. But nobody quits until the belt stops, do they?
A. Friday night?
Q. How many minutes did you take to clean the belt, I mean so that it stops?
A. To clean the belt?
Q. After it stops, how many minutes is it before the ordinary work there is over and these girls leave?
A. 25 to a half-hour.
Q. That is your work of cleaning off that you are talking about?
A. Cleaning the belt after it is stopped.
Q. Before, when starting time comes, you say there are some saggers to be on the belt, how long does it take to get them off of there after stopping time, pardon me?
A. At night?
Q. At night.
A. 10 minutes.
Q. 10 minutes, you say it takes 10 minutes for that belt to make a circle?
A. That is right.
Q. That is right, ten minutes. But, you get out about a half-hour different every Friday night, don't you?
A. I wouldn't say every Friday night; there are some there I have been out half an hour before she is, not every Friday night. • • •
Q. (By Mr. Numneley) Did you or did you not clean up on the second Friday on here between where it shows you went out at 5:22 and Rita Schulte went out at 4:56?
A. I couldn't say that period or not.
Q. Did you or did you not clean up on the first Fri-

day, shown on these cards, Exhibit 3-V and Exhibit 5-V, wherein it shows you went out at 4:41 and Rita Schulte went out at 4:14?

A. I would say I didn't.

Q. You would say you didn't, and on the other one you say you don't know, is that right?

A. That is right.

The Master: That difference between 4:41 and 4:15, that is 26 minutes; what would be your explanation for that, if you were not cleaning up?

A. Well, I just had more saggers to put in, it took me longer to get them in.

The Court: Would it take as long as 26 minutes after the first girl left?

A. That depends what time she left and it depends on the saggers I have to get in and it depends on the girl that is filling them, how fast she gets rid of them.

The Master: You mentioned the figure of 10 minutes as being the time it took to get the saggers off the belt; this is 26 minutes; would it take that long too, or were you just giving an average figure?

A. I was giving a rough guess, it takes 10 minutes for the belt to make a loop.

The Master: Can it go as long as 26 minutes?

A. No, it wouldn't take the belt 26 minutes to go around; what I say 10 minutes for was for the belt to make one complete circle. See, it goes on a sort of circle, it comes out down here and it has to go all the way back. They are empty here (indicating) and they get filled up on this line and they go back full.

The Master: Could you be engaged there for 26 minutes after the girls had started leaving without doing any cleaning up work?

A. No, I don't believe it would take me that long to get them all out. • • •

Q. (By Mr. Nunneley, continuing) I will show you Exhibit 3-W and Exhibit 5-W, being cards for yourself and Rita Schulte respectively for the pay ending May 28,

1940, and ask you to examine the cards and ask you, first, if you will tell us from examining the cards what the starting time was in your department during that two-week period (handing exhibits to witness)?

A. 6:46.

Q. 6:46. Were you again late on each of the days on that card?

A. I was there after 6:46.

Q. After 6:46?

A. That is right.

Q. And, so, likewise, was Miss Schulte, is that right?

A. Yes, she was there, too.

Q. You were there after she was on all of those days, is that right?

A. That is right.

Q. And referring to the first Friday shown on Exhibit 3-W and the first Friday shown on Exhibit 5-W, just tell me, please, what time you checked out on that day?

A. 4:54.

Q. And what time Miss Schulte checked out?

A. 4:22.

Q. Now, how many minutes is that between that you got out after she did?

A. I don't know.

Q. You don't know?

A. No. Around 35 or 40 minutes.

Q. Well, let's see. 4:22—4:54, that is 32 minutes, isn't it?

A. Yes.

Q. 32 minutes. Now, what would be your explanation of what you were doing during that period?

A. I could have been cleaning up.

Q. Now, on the same Exhibit 3-W, what time did you go out the second Friday?

A. 4:51.

Q. And what time did Rita Schulte go out?

A. 4:35.

Q. And what is your explanation for that period?

A. I don't know.

Q. You don't know. Were you sent home on any of the days indicated on Exhibit 3-W because you were behind 6:46?

A. No.

Q. I show you Exhibit 3-X, being your card for the period ending June 11, 1940. The first Friday—what does that indicate, the marks that are on that on the first Friday (handing the exhibit to the witness)?

A. I couldn't say right offhand. It is too long ago.

Q. Does that indicate you worked somewhere else than in your own department?

A. That is what it seems like. It seems like a foreman's initials, or something.

Q. And there were some hours there, is that right?

A. Four, or something.

Q. And the next week, apparently, in there shows work on Saturday, so that would be the clean-up day, wouldn't it?

A. Yes.

Q. At what time did you get out on Saturday?

A. 4:59.

Q. And what time did Rita Schulte get out on Saturday?

A. 4:35.

Q. That is 24 minutes. What is your explanation of what you were doing during that time?

A. I don't know.

Q. You don't know?

A. It is too long ago.

Q. You don't know whether you were cleaning up, or not?

A. No, I don't. I couldn't say for sure.

Q. You might have been, is that right?

A. It is too long ago.

Q. Too long ago?

A. That is right.

Q. Also, on Exhibit 3-X and 5-X, it shows that on every

day but one you came in after Rita Schulte, doesn't it?

A. That is right.

Q. Were you mistaken this morning when you said that you always came in before the girls did?

A. It was supposed to be.

Q. I didn't ask you supposed to be. I don't care what you were supposed to do. I am trying to find out what you did. Were you mistaken when you said that you always came in before the girls did?

A. I was supposed to be in before the girls went in.

Q. Yes.

The Master: Did that include not only starting before them, but punching the time clock before them?

A. We were supposed to be in front of them in line. We would get in before they would.

Q. (By Mr. Nunneley) Didn't you testify this morning that you had to start before they did in order to get the saggers up there for them to load?

A. On Monday mornings, yes.

Q. Didn't you have to do that on other days?

A. The saggers were already there on other days.

Q. So that Monday morning business you are talking about is the matter of putting 16 saggers on there, each of which takes a few seconds, doesn't it?

A. Yes. And it also means putting 30 or 40 on the floor.

Q. All right, let's make it 30 or 40 of them. But it is a few seconds apiece, isn't that right?

A. About that.

Q. How many seconds would you say it takes you to handle one of these saggers, take it off the belt and put them on the floor, or on the bench, wherever you are going to put them?

A. How long would it take?

Q. Yes.

A. A few seconds.

Q. Well, how many? Could you say five seconds?

A. Two or three.

Q. Two or three seconds?

A. Maybe five.

Q. Maybe five, all right. So that the whole operation, of everything you even claimed to do, wouldn't be over a couple of minutes, would it, on Monday morning?

A. We don't stand there just picking them up and putting them down. You might wait a second or so before they came to you. They are a few feet apart.

Q. All right.

A. They are not steady lifting them up and down.

Q. How long would it take them to come by there? That is about as fast as you can pick them up, isn't it, that they are coming by on the belt?

A. Yes.

Q. When you get one over on the bench, there is another one waiting for you?

A. You have just got it backwards. We pull them off.

Q. You pull them off and put them on the side if they come too fast?

A. Any place.

Q. If they come too fast, faster than the girls can load them, you set them on the floor?

A. That is right.

Q. As a general rule they come about as fast as the girls load them, don't they?

A. Yes, that is right.

Q. They don't pile them on the floor and have them run around for fun?

A. No.

Q. So your Monday morning business, ahead of time business that you have been talking about here, consists of getting the 16 saggers onto the girls' benches?

A. And keeping the rest from going by, that is right.

Q. Keeping the rest from going by. Now, who is putting them on at the other end?

A. The unloaders. They unload them from the cars.

Q. They unload them from the other end?

A. That is right.

Q. Before they can get to you, they have got to start?
A. That is right.
Q. And you don't know what time they start?
A. I couldn't say.
Q. They aren't started when you get there, ordinarily, if you are on time, are they?
A. No.
Q. I show you Exhibit 3-Y. That is your card for the June 25, 1940, pay?
A. That is right.
Q. And according to that card there is one week there that you didn't work, isn't there?
A. That is right. My vacation week, I imagine. That was July.
Q. That was your vacation week. Did you get paid for that week?
A. I guess so.
Q. Well, did you get paid for that vacation week?
A. Yes, I guess I did.
Q. And the second Friday on that card, 3-Y, what time did you go out?
A. 4:10 I punched out.
Q. 4:10. And Miss Schulte went out at what time?
A. 4:07.
Q. 4:07. So on that occasion you only went out three minutes after she did, is that right?
A. That is right.
Q. What explanation is there on that one?
A. Well, we both got done at the same time, that is all; both at the same time.
Q. At the same time. I see. And again on those two cards, on the days that you worked, or on every day, you were in there behind her, were you not?
A. That is right.
Q. You didn't do any work during this first part of the July 25 pay, during that week, did you?
A. I don't believe so.

Q. You got your wages just the same?

A. That is right. ■ • •

February 16, 1942

Q. Mr. Trombley, I show you Exhibit 3-Z, that is your time clock card for July 9th, and on that card the work concluded for the calendar week on Saturday at that time, instead of that first one on there, instead of Friday, isn't that correct?

A. That is right. • • •

Q. (By Mr. Nunneley) Can you tell why it was you worked Saturday at that time?

A. No, I can't.

Q. Would that be because the Fourth of July would come in that week?

A. I imagine that is what it is for.

Q. And you checked out at what time on Saturday?

A. 4:36.

Q. And I show you Exhibit 5-Z, being the card of Rita Schulte for the same period, and what time did she check out?

A. 4:31. ■ ■ ■

Q. (By Mr. Nunneley) So that again on that occasion you stayed longer than she did, anyway, didn't you?

A. That is right.

Q. But you don't know what you did, is that right?

A. I was working.

Q. You were working longer. And also, checking the card for the next week on Friday, what time did you check out?

A. 4:58.

Q. And what time did Rita Schulte check out?

A. 4:36.

Q. 4:36, so at that time you were some 20 minutes after she was?

A. That is right.

Q. And your explanation for that is that you were working, is that right?

A. That is right.

Q. Of course, your time was counted for that twenty minutes, too, wasn't it?

A. Yes, according to the clock.

Q. Well, the other day you said you couldn't be engaged for 26 minutes after the girls left, without you were cleaning up; do you remember that?

A. Yes.

Q. (By Mr. Nunneley) Now, isn't it true that in this period you must have been cleaning up, isn't that the correct thing?

A. No, not exactly.

Q. Not exactly?

A. I could have been cleaning up my end, getting all the saggers in.

Q. You could have been cleaning up your end?

A. Getting all the saggers in.

Q. During that 22 minutes?

A. That is right.

Q. But you don't know for sure whether that is what you were doing or not, is that what you want us to understand?

A. No, I couldn't say for sure, it is too long ago.

Q. And you don't know whether you worked after that time that is on there or not, did you?

A. What do you mean, worked after that time?

Q. After the 4:58 that is punched, you don't know whether you did that day or not, do you?

A. I can't say for sure; no. It is too long ago.

Q. As a matter of fact, there isn't any day you can tell whether you worked after the time that is punched on the card, is there?

A. Not any one day I can't, but the general rule was to clean up after.

The Master: Did you ever make any notes, any records of any sort as to the time that you worked?

A. No, sir, I never kept any.

Q. (By Mr. Nunneley) You did have furnished to you every day, though, the hours that the company credited you with the day before, didn't you?

A. On the cards, yes.

Q. So that you knew what you were being credited with every day?

A. Yes.

Q. That you were being credited with having worked the day before. I show you Exhibit 3-AA, time clock card for July 23, 1940. . . .

And on the Friday that is shown on that card, what time did you check out?

A. 5:16.

Q. 5:16. I show you Exhibit 5-AA being the card of Rita Schulte. It doesn't show that she worked on the Friday that you worked, is that correct?

A. That is correct.

Q. I show you Exhibit 3-BB, being your time clock card for August 6, 1940.

A. That is correct.

Q. And the first Friday on there, what time did you check out?

A. 4:57.

Q. And I show you Exhibit 5-BB, time clock card of Rita Schulte for August 6, 1940. The first Friday on there, what time did she check out?

A. 4:34.

Q. Now, that appears to be a difference of 23 minutes, doesn't it?

A. That is right.

Q. And you would consider you were cleaning up during that period, too?

A. No, I wouldn't consider that.

Q. You wouldn't consider that?

A. No.

Q. If the young ladies were gone from the department, there wasn't anything else you could do, was there?

A. That one young lady might have been gone, but there is a lot more.

Q. You want us to check with the rest of them, is that right? Do you want to check with the rest of the young ladies, go through this with you on some more of them?

A. I can't say what time Rita got through; where she was working on her end, if she got all her work done, she went and punched out. We have got a lot of saggers there. We have got to get done before we go out.

Q. On Exhibit 3-BB, on the second Friday what time did you punch out?

A. 4:47.

Q. And Exhibit 5-BB, what time did that lady punch out?

A. 4:22.

Q. So there is 25 minutes there, too, isn't there?

A. That is right.

Q. Didn't you tell the Master the other day that as a matter of fact when there was 20 or 26 minutes in between that you must have been cleaning up, there wasn't anything else you could be doing, isn't that right?

A. Yes, I told him that.

Q. Do you still stand by it?

A. Well, I could have been cleaning up. I could have been working, too.

Q. If you were cleaning up, it was in your time, wasn't it?

A. On the card, yes, if I was.

Q. I will show you Exhibit 3-CC, time clock card, August 20, 1940. The first Friday on there, what time did you punch out?

A. 5:18.

Q. All right. And on the first Friday on Exhibit 5-CC, being the card of Rita Schulte, what time did she punch out?

A. 4:36.

Q. 4:36. So that there was over half an hour there, wasn't there?

A. That is right.

Q. And on that day you got credited with 9¼ hours, didn't you?

A. That is right.

Q. And Rita Schulte got credited with eight and a half, isn't that right?

A. That is right.

Q. Now, on Exhibit 3-CC, what time did you check out on the last Friday, if you can tell?

A. 5:42.

Q. 5:42. And what time did Miss Schulte check out on Exhibit 5-CC?

A. 5:09.

Q. 5:09. So again there was in the neighborhood of twenty minutes, is that right?

A. That is right.

Q. And the first time over a half hour?

A. That is right.

Q. Exhibit 3-CC, and 5-CC, examine them and see if it is not a fact that on every day of that two-weeks period, you went in the shop after she did, instead of before?

A. That is correct. . . .

Q. (By Mr. Nunneley) I show you Exhibit 3-DD. That was a Saturday, — where you worked on a Saturday, wasn't it (handing exhibit to witness)?

A. A half day.

Q. A half day. That would be the time when the clean-up would be, wouldn't it?

A. I imagine so.

Q. What time did you check out on Saturday?

A. 12:15.

Q. 12:15. And, I show you Exhibit 5-DD, and what time does it show Rita Schulte checked out (handing exhibit to witness)?

A. 12:39.

Q. 12:39. And, on the second Friday in that period, — on the Friday that is in that period, there is only one on

there—the second Friday in the period, what time did you check out?

A. 5:11.

Q. And what time did she?

A. 5:11.

Q. So, for once you both got through at the same time, didn't you?

A. That is right.

Q. Now, will you examine the cards, and see if it isn't true that on every day but one in that entire period on those cards, you went to work after she did?

A. That is right.

The Master: When did you usually come in with reference to the time the other men in the department came in? Were you usually one of the early birds, or would you sometimes be first, and sometimes last, or did you have any usual practice in that respect?

A. All the men punch in at the same time, see. You might have been first in line or you might have been last in line.

The Master: When you came there—you said you were supposed to be there fourteen minutes to seven, and on many of these cards you didn't get there until eleven minutes, or didn't check in until eleven minutes to seven. Would that mean that all the men were late on that day?

A. Well, no, it wouldn't. . . .

The Master: Were you frequently late, or did you usually come in at the time the others did?

A. Usually went with the rest of them.

The Master: All right.

Q. (By Mr. Nunneley) As a matter of fact, all the 85 people, or thereabouts, in your department, had to go through the one clock, didn't they?

A. Yes, they did.

Q. And get back there and go to work, and get ready to go to work; that is right, isn't it?

A. To go to work.

Q. And how many other departments had to go through that clock at that time, the same time you did?

A. At that one time, no other departments.

Q. No other departments. In other words, you want it understood now that no other departments were supposed to go through the clock at the same starting time, or about the same time that you were?

A. Before or after we did, but not the same.

Q. Before or after you did. In other words, the other departments beyond you—you went right through more or less in order of departments. What department went through ahead of yours?

A. I couldn't say. It was usually the dipping room.

Q. The dipping room went through ahead of your department?

A. Not all the time, but at times they did.

Q. And what department would go through behind?

A. I couldn't say. I think it was the chipping—chipping department.

Q. Chipping department. Now, it is a fact that practically all of these departments had to be working at about the same time, or the work would get cluttered up right away, isn't that true?

A. No, not right away.

Q. Within a few minutes it would, isn't that right?

A. I couldn't say just how long. • • •

Q. (By Mr. Nunneley) Now, witness, how many departments, do you know of, that had to start—you say 6:46—how many departments do you claim had to start at 6:46? • • •

A. I would say two is about all I know of.

Q. (By Mr. Nunneley) Two that you know of, and what was the other one besides your own?

A. The dippers.

Q. The dippers, and how many people would be in the dipping department?

A. I have no idea.

Q. You don't know. Did you ever have to line up at the clock?

A. Our department, yes.

Q. Your department, you would. Did you ever see other people lined up at the clock?

A. Before us?

Q. Before you?

A. If the dippers got in before us, they were lined up before us.

Q. There was only one time clock that the dippers and your group used during most of the period, isn't that

A. During most of the time, yes.

Q. There was one clock, so you couldn't all go in there at 6:46, could you?

right?

A. No, not all the departments.

Q. No. And, if your department went in at 6:46, if the dippers went in ahead of you, they had to go in before 6:46, didn't they?

A. I imagine so.

Q. And in which event they would be credited with the 15 minutes, wouldn't they?

A. I don't know.

Q. The way the time was figured, as you understood it?

A. I don't know nothing about the dipping room, how their time was figured, or what time they were supposed to be in, or what?

Q. All right, you don't know anything about them?

A. Not the dippers, no.

Q. But you did know how your time was figured?

A. I know how it was marked, yes; I know what the clock said.

Q. And you knew how it was figured to arrive at the hours that were placed on there, too, didn't you?

A. Yes.

Q. You knew in the morning they figured you to the

next quarter hour; if you went in at 6:46, they figured seven o'clock was starting?

A. That is right.

Q. And if you went out any time between four o'clock and 4:14, they figured four o'clock was quitting; you knew that, didn't you?

A. That is right.

Q. And the same principle applied at noon?

A. That is right.

Q. You knew that all the time you worked there?

A. That is right.

Q. When did you start working there?

A. '37, in the spring.

Q. In '37; in the spring of '37, and the same method was in vogue then, wasn't it, figure it just the same?

A. I imagine so.

Q. You were there, do you know or don't you?

A. Well, I couldn't say for sure, but I imagine it was. I don't believe I know of any changes made.

Q. You know of no changes made in the method of figuring.

A. Not after I started there.

Q. I show you Exhibit 3-EE. There is only one Friday on that on which you appear to have worked, is that right?

A. That is right.

Q. And I show you Exhibit 5-EE, and the second Friday on it is the same Friday that Rita Schulte was working?

A. That is right.

Q. On that second Friday on the card, Exhibit 3-EE, what time did you punch out?

A. 6:28.

Q. And Rita Schulte?

A. 6:11.

Q. On those two cards, will you examine them? Isn't it true that both at noon and morning you always went in after she did?

A. That is right.

Q. Exhibit 3-FF is your card for October 1, 1940, I guess.

Mr. Lamb: 1940?

Mr. Nunneley: Yes.

A. Yes, sir. It is hard to see it.

Q. The first Friday on there, what time did you check out?

A. 4:31.

Q. And I will show you Exhibit 5-FF, card of Rita Schulte, and what time did she check out?

A. 4:06.

Q. In other words, you stayed in that day more than a half-hour after she did, is that right?

A. That is right.

Q. And on the second Friday shown on those two cards, what time did you check out?

A. This is Rita Schulte's card. She punched out at 5:10.

Q. And you checked out when?

A. 5:22.

Q. 5:22. Will you examine the two cards and see if it isn't true that on most all the other days when you both worked, that excepting Fridays, you got through within a couple of minutes of the same time, both of you?

A. That is right.

Q. On these two, Exhibits 3-FF and 5-FF, examine them again and both at morning and noon that you went in after she did, didn't you?

A. That is right.

Q. On Exhibit 3-GG, by your time clock card for October 15, you checked out what time, on Friday, the first Friday?

A. 4:39.

Q. And Exhibit 5-GG, Rita Schulte, what time did she check out?

A. 4:19.

Q. 20 minutes difference between you again on that Friday?

A. Yes.

Q. And on the second Friday on Exhibit 3-GG?

A. 5:22.

Q. 5:22. And Exhibit 5-GG?

A. 5:03.

Q. 5:03. And examine the two exhibits and see that if on every other day in the week you didn't go out within three minutes of the same time that she did?

A. That is right.

Q. Exhibit 3-HH is your time clock card for October 29, 1940?

A. That is mine.

Q. And on the first Friday on there, what time did you punch out?

A. 4:50.

Q. I show you Exhibit 5-HH, time clock card of Rita Schulte for the same time. What time did she punch out?

A. 4:20.

Q. Now, look at the second Friday on Exhibit 3-HH.

A. 5:21.

Q. Exhibit 5-HH.

A. 5:01.

Q. On Exhibit 3-HH, note the first one at the top, being Wednesday, what time did you go in that day?

A. 7:15.

Q. And from there you had to go over to your place of work and get ready to go to work, didn't you?

A. That is right.

Q. Do you know whether you were given credit going from 7:15 that time, or not?

A. I imagine I was.

Q. In other words—

A. (Interrupting) That is right on the card.

Q. You were paid right from 7:15 that time, weren't you? . . .

The Master: October 29, 1940, is the card date. The very first day on the card there. Can you tell by the computation of work there as to whether you were given credit for beginning at 7:15?

A. No, I can't tell you, but I imagine I was. It is right on the quarter-hour. I imagine I got paid for that.

The Master: Well, you checked in at 7:15 and out at 12:03. That would be four and three-quarters hours to lunch, figuring to the quarter-hour; and in the afternoon you came in at 12:46 and left at 4:04. Figuring on the quarter-hour, that would be 3 hours that you would be given credit for, according to the system that he says they used there. So that would be three plus four and three-quarters is seven and three-quarters. Apparently, then, if you follow my computation, you were given credit for the morning beginning with 7:15?

A. Yes, sir.

The Master: And in the afternoon you were only given credit beginning at one because you came in at 12:46?

A. That is right.

Q. (By Mr. Nunneley, continuing) You weren't sent home that day, were you?

A. No. I might have been told to come in at that time.

Q. Well, I will show you Miss Schulte's card for the same day. She started—

A. (Interrupting) 6:47.

Q. 6:47. So that the department, at least, was supposed to start at the same time it had been right along?

A. That is right.

Q. You were late, then, is that right?

A. Not necessarily.

Q. Not necessarily. And another day there is a Friday on there 7:12 you came in, is that right?

A. That is right.

Q. And you weren't sent home that day either, were you?

A. No.

Q. Exhibit 3-II, the first Friday on there you didn't work in the afternoon? Is that correct (handing exhibit to witness)?

A. That is right.

Q. And what time did you check out on the second Friday?

A. 4:37.

Q. 4:37. I show you Exhibit 5-II; on the second Friday what time did Rita Schulte check out?

A. 4:11.

Q. There were 26 minutes again between those two?

A. That is right, yes.

The Master: On shifts that were supposed to start, according to your testimony, at 6:46, when you were supposed to come in at 6:46, if you came in at, say, three minutes to 7:00, what happened to you?

A. Nothing.

The Master: Did you punch the time clock immediately when you came in?

A. Oh, yes.

The Master: Was the time clock always open for punching whatever time you came in?

A. That is right.

The Master: You stated that it wasn't open until 6:46 on days that the shift started at that time, as I understand it.

A. The foreman was standing there.

The Master: The foreman was standing there, but you weren't allowed to punch in before 6:46?

A. That is right.

The Master: But, if you came in at three minutes to 7:00 you would go and punch in?

A. He wasn't there after that. Once they started going in, he was gone.

Q. (By Mr. Nunneley, continuing) You could punch in, as I understand it, any time after, we will say, 6:46 was when the foreman let you by the clock, you could punch in any time after that; is that right?

A. That is right.

Q. No matter what time you came. You could go through there and punch in?

A. That is right.

Q. Whether it was 47 or 48 or 49, or 7 o'clock, or what it was, you could go through there and punch in?

A. That is right.

Q. If you wanted to. You were prevented from punching in before 6:46; that is right, isn't it?

A. That is right.

Q. And the same was true, was it, at noon when you were going back from lunch, was that true then, too? Would you go back at whatever time you wanted to?

A. You had to go back in at a quarter to 1:00 or 46 to 1:00—or 12:46. The clock was open.

Q. The clock was open again at lunch time for you to go back at a certain time, is that right?

A. That is right.

Q. And that was at quarter to 1:00 or 14 minutes to 1:00?

A. I imagine so.

Q. What I am getting at is the same procedure took place at noon when you went back in as took place in the morning, is that correct?

A. That is right.

Q. And sometimes you punched in after, didn't you, some of these people?

A. That is right.

Q. On Exhibit 3-II, the second Friday, what time did you punch in at noon?

A. I didn't punch in.

Q. You didn't punch in?

A. Oh, the second, you say?

Q. The second Friday.

A. 1:03.

Q. 1:03. So that time you went in after the rest of them, didn't you; is that right?

A. No. We could have been told to be in at that time. Short of wire, or something.

Q. And what time did you punch out that day?

A. 4:06.

Q. And Rita Schulte punched out when?

A. 4:06.

Q. Out of all of these cards there are only two of them we have found thus far when you punched out at the same time that she did.

A. That is right.

Q. Within a minute or two?

A. That is right.

Q. All that we have been through, and on the second Friday shown on Exhibit 5-JJ, what time did you punch out?

A. 4:25.

Q. And Rita Schulte?

A. 4:06.

Q. Examine the card and see if it is true on all the other days on there you got out ahead of her.

A. That is right.

Q. Exhibit 3-KK is your card for December 10, 1940; what time did you check out on the first Friday shown on there?

A. 4:55.

Q. And Exhibit 5-KK, being the Rita Schulte card for the same period, what time did she check out?

A. She checked out at 4:36.

Q. 4:36. There was 19 minutes difference in your checking out time?

A. That is right.

Q. And on the second Friday shown on the card did you work?

A. No, sir, I didn't.

Q. You didn't work that day, and if you compare the cards, does it appear that on every other day excepting Friday Rita Schulte got out after you did?

A. That is right.

Q. Exhibit 3-LL, being your card for December 24, 1940, what time did you punch out on Friday?

A. 4:34.

Q. And Exhibit 5-LL, being the Rita Schulte card for the same period, what time did she punch out?

A. 4:10.

Q. 4:10; there was 24 minutes difference there, is that right?

A. That is right.

Q. And on the same card, Exhibit 3-LL, the second Friday, what time did you punch out?

A. 4:43.

Q. And Rita Schulte?

A. 4:24.

Q. 4:24. That is 19 minutes there. Excepting for Fridays, again, Miss Schulte got out after you did, didn't she, on every day?

A. That is correct.

Q. Exhibit 3-MM, being your card for December 31, 1940, that is your card, isn't it?

A. That is correct.

Q. There is only one week shown on there, isn't there?

A. That is right.

Q. I show you Exhibit 5-MM, card for December 31, 1940, for Rita Schulte; there is likewise only one week on there.

A. That is right.

Q. On the Saturday shown on Exhibit 3-MM, what time did you check out?

A. 4:51.

Q. 4:51, and I show you Exhibit 5-MM, the card of Rita Schulte; what time did she check out?

A. 4:28.

Q. So there was more than 20 minutes difference between you that day, wasn't there?

A. Yes.

Q. And on all the other days shown on the card, you got out before she did, didn't you?

A. Tuesday she got out before I did.

Q. Oh, yes, Tuesday she got out five minutes ahead of you?

A. That is right.

Q. And with that exception, the other days you got out before she did?

A. I believe that is right.

Q. (By Mr. Nunneley) I show you Exhibit 3, being card for January 14, 1941, Earl Trombley. Is that your card for that period, Mr. Trombley (handing exhibit to witness)?

A. That is right.

Q. And in that card, the first week shown thereon, the calendar week, the last work of that calendar week was done on Saturday?

A. That is correct.

Q. What time did you check out?

A. 4:14.

Q. And what time did Rita Schulte check out?

A. 3:54.

Q. And on the second calendar week, what day did you wind up working on?

A. I worked two hours Saturday.

Q. And, according to Exhibit 5-E, Miss Schulte didn't work that day, did she?

A. No, she didn't work on Saturday.

Q. And on Friday you checked out at what time, of that second Friday?

A. 4:01.

Q. And what time did Rita Schulte check out?

A. 3:39. • • •

Q. (By Mr. Nunneley) I show you Exhibit 3-C, being your time clock card for February 25, 1941, and ask you what time you checked out on the first Friday shown on there?

A. 4:32.

Q. And Exhibit 5-H, being the time clock card for Rita Schulte for the same period; what time did she check out?

A. 4:13. • • •

Q. Witness, other than the figures on the cards, can you tell anything about how many hours you worked in any given day, that you actually worked?

A. Outside of what is on there?

Q. That is right.

A. No, I couldn't. • • •

Q. (By Mr. Nunneley) You haven't made any computation as to any time, is that right?

A. That is right.

Q. And you don't know how much time you spent that isn't shown on the clocks, is that right?

A. No. • • •

Q. You don't know. All right: So that as far as any time that isn't shown on the clocks, you don't know how much time you spent; that is right, isn't it? • • •

A. No, I don't know.

Q. (By Mr. Nunneley) Do you claim that every week you were over the forty hours in 1940? From November of 1940 until the time this suit was started, do you claim that every week you were over forty hours?

A. No, I don't claim that.

Q. Do you know how many weeks there were that you were over forty hours, under any way of figuring?

A. No, I don't know, because I had days off. • • •

Q. As a matter of fact you started out, when you first worked there, you worked 44 hours, didn't you?

A. I think so.

Q. That was your normal way of working, according to the computations that were given, 44 hours was supposed to be the week, that is correct, isn't it?

A. Yes.

The Master: Let's get this clear, that is according to the company's computation, because that may make a difference; is that what you understand, witness?

A. That the working week was 44 hours.

Q. (By Mr. Nunneley) That was the working week, and later you understood that the working week was 42 hours, didn't you?

A. That is right.

Q. And later you understood it was 40 hours, didn't you?

A. That is right.

Q. And during each of those periods and all of those

periods you knew the way the company was computing your hours, didn't you?

Mr. Lamb: I object, it doesn't make any difference.

The Master: You knew the way the company was computing your hours?

Mr. Nunneley: Yes.

The Master: I will overrule the objection. . . .

Q. (By Mr. Nunneley) Did you ever object to the method of computing the time?

A. No.

Q. You are not working there any more?

A. No, sir.

Q. Did you get fired, or quit?

A. Quit.

Q. You quit. So that you were not discharged on account of that?

A. No.

Mr. Lamb: Did you go on strike?

Q. (By Mr. Nunneley) Did you go out on strike in April of 1940?

A. Yes, sir.

Q. And you went back in May of 1940?

A. Yes, that is right.

Mr. Cooper: 1941.

Mr. Nunneley: Yes, 1941, pardon me.

Q. (By Mr. Nunneley, continuing) The strike was in April, 1941; that is right, isn't it?

A. That is right.

Q. And you went back in May of 1941, and after you went back the method of computing the time was just the same as it was before, wasn't it?

A. There were a lot of changes made when we went back.

Q. I say, the method of computing the time was just the same as it was before, wasn't it?

A. I don't know what you mean there.

Q. Well, the way it was computed by the company to

figure your hours spent was exactly the same after that strike as it was before, isn't that correct?

A. Yes, that is correct.

Q. That is right. • • •

A. No, I couldn't say.

Q. (By Mr. Nunneley, continuing) Then, you knew all the while that the company was figuring that when you went in from 6:46 or any time thereafter up until 7:00 o'clock that the company figured that you started work at 7:00 o'clock, isn't that right?

A. No. We started to work as soon as we got in.

Q. I asked you what you knew how the company was figuring when you started work.

A. Yes, that is right.

Q. The company figured you started work at 7 o'clock; you knew that?

A. That is right.

Q. And that the same thing applied at noon when you went in. If you went in at 12:46 you knew the company figured you started work at 1 o'clock?

A. That is right.

Q. So that you knew when they figured you were starting to work all the while, didn't you?

A. That is correct.

Q. I show you Exhibit 3-F, time card for April 8, 1941, and will you tell us how many hours you worked the first day shown on the card?

A. Eight.

Q. And will you tell us how many hours you worked the second day shown on the card?

A. Three and one-fourth.

Q. And how many hours you worked the third day shown on the card?

A. Seven and three-fourths.

Q. And how many hours you worked on the fourth day shown on the card?

A. Five.

Q. And how many hours you worked on the fifth day shown on the card?

A. Eight.

Q. And on the sixth day?

A. Four and one-half.

Q. And on the seventh day?

A. Eight.

Q. And on the eighth day?

A. Eight.

Q. And on the ninth day?

A. Two and one-half.

Q. And on the tenth day?

A. Eight and one-fourth.

Q. I show you the card, Exhibit 3-G, the card for April 22, 1941. Will you tell us how many hours you worked on the first day shown on the card?

Mr. Lamb: Let's have the question—indicate that is the company's computation?

Mr. Nunneley: I asked him how many hours he worked.

The Master: "Shown on the card" might refer to the first day and might refer to the hours he worked. I can see how he might interpret it, and I interpreted it too, as showing the number of hours shown on the card. I realize there was an ambiguity at that time, and I was going to question you about it, but both of you seemed to understand about it.

Mr. Nunneley: I thought we understood it.

The Master: Both of you had a different idea, it is obvious.

Q. (By Mr. Nunneley) I will show you Exhibit 3-F, and ask you how many hours you worked the first day shown on the card? • • •

A. (Computing with paper and pencil) I don't know just how to figure this. (Figuring.) It didn't come out right.

The Master: Take your time.

A. (Figuring.)

I would say around nine hours. It might be a few minutes off either way. • • •

Q. (By Mr. Nunneley) Can you figure it any closer than that?

A. No. • • •

The Master: All the time you spent in the shop, in the plant, after passing the time clock, was 8 hours and 44 minutes? • • •

The Master: First ask him, do you know independently of the exhibits any week you worked more than forty hours?

A. I don't know just what he means by that.

The Master: Did you work at the plant more than forty hours any week that you know of?

Mr. Lamb: 1941?

The Master: Is that restricted to 1941?

Mr. Nunneley: Yes.

The Master: In 1941.

A. I couldn't say for sure, but I imagine I have. • • •

Q. (By Mr. Nunneley) Exhibit 3-F, the first day shown on the clock, which is evidently March 26th, the first day shown on the card, do you recall what you did after you punched in?

A. Yes, I went to work on the line after I punched in.

Q. (By Mr. Nunneley) Do you recall what day the other people got there, what time the people got there?

A. No.

Mr. Lamb: What day are you referring to, the 26th?

Mr. Nunneley: The same day and the same time.

A. I imagine the same time.

Q. (By Mr. Nunneley) Now, it is true, of course, that you couldn't start to work unless the group was there ready, isn't that right?

A. Quitting on production, no, I couldn't.

Q. You couldn't?

A. But I could still work without being on production.

Q. Without being on production. And you don't know,

do you, on that day, what time the rest of them were there, so you could actually start producing, anyway?

Mr. Lamb: I think he has answered.

A. No, I imagine they got in the same time.

Mr. Nunneley: I didn't ask you about your imagination.

A. I couldn't say.

The Master: Do you have any definite recollection?

A. No, I haven't.

Mr. Nunneley: You haven't any recollection about that.

The Master: Do you have any actual, definite recollection of what you did on March 26, 1941?

A. No, sir.

The Master: After you punched the clock?

A. No, sir.

The Master: Your answer was just based on your general practice, in other words?

A. Yes, sir.

Q. (By Mr. Nunneley) And on the same Exhibit 3-F, you went out at 11:41, according to that, is that right?

A. That is correct.

Q. And you don't know just what time you quit production, do you?

A. Not exactly, no. But according to the regular time, it was about a minute and a half.

Q. But I say that day you don't know what time you quit production, do you, exactly?

A. I can't remember.

Q. And on the same card, it shows, Exhibit 3-F, that you went in at 12:34?

A. That is correct.

Q. You don't know what time the rest of them got there, do you?

A. About the same time I did.

Q. About the same time you did. And you don't know what time you started in production after that entry, either, do you?

A. I am not positive about it.

Q. And you went out, according to the card, on the same day, at 4:25?

A. That is correct.

Q. And you can't tell exactly what time you left production, then, either, can you?

A. At that time; about a minute from that.

Q. About a minute from that. On the next day you went in at 12:34, is that right? In the afternoon; you didn't work in the morning?

A. Up here (indicating)?

Q. Yes.

A. Yes, 12:34.

Mr. Lamb: That is the second time he had checked in, isn't it?

Mr. Nunneley: Apparently. He didn't work after the first time.

Mr. Lamb: He reported in the morning at 7:10.

The Master: He said he was sent home in the morning.

Mr. Lamb: Did you ask him whether he got paid?

Q. (By Mr. Nunneley) That would indicate you reported late, doesn't it? 7:10.

A. Not necessarily.

The Master: Do you know why you were sent home on that day?

A. No, I couldn't say. That doesn't mean that I was late.

Q. (By Mr. Nunneley) That doesn't mean you were late?

A. No.

The Master: For what other reason were you sent home when you reported in the morning?

A. Well, there is times when you got too much time in, they sent you home.

Q. (By Mr. Nunneley) They sent you home sometimes when you got too much time in. What do you mean by that?

A. If they figured you was going to get overtime, over 40 hours, you would get a day off.

Q. In other words, you understood the policy of the

company in the plant, was to see that you didn't work over 40 hours, didn't you? . . .

A. Well, I would say their policy was to see that you got as less hours as you could. . . .

The Master: I think I will rule the cross-examination ended.

Mr. Nunneley: May we have an objection on the record to the ruling?

The Master: Yes.

Re-Direct Examination

By Mr. Lamb:

Q. May I ask the witness whether or not duplicate copies of the time cards were given to you or other employees?

A. No, sir.

Q. And I ask the witness whether the company, Mt. Clemens Pottery Company, made restitution in the early part of 1939 of some overtime pay to you; do you have any recollection of that?

A. No, sir.

Q. May I ask the witness whether or not there was a line-up in front of the time clocks when you took your place in line and punched the clock when you got to the clock?

Mr. Cooper: Just a minute, an objection to the question on the ground it doesn't specify a time.

Q. (By Mr. Lamb) May I ask whether or not, whether it was his practice to line up at the clock?

The Master: In the morning or afternoon or any time?

Q. (By Mr. Lamb) In the mornings. Upon your appearance, if there was a line there, did you line up and take your place to punch the clock?

A. Yes, sir.

Q. When you arrived at it?

A. That is right.

The Master: What is that? Was that true during the entire period from the time you began work until the time you quit?

Mr. Lamb: That you took your place in line?

A. That is right.

Q. (By Mr. Lamb) And in the afternoon, in reporting in, is that true that you took your place, if there were others in line, you took your place in line?

A. That is correct.

Q. And in checking out at noon, did you take your place in line, if there was a line?

A. Yes, sir.

Q. And in checking out at night, did you take your place in the line, if there was a line at the time clock?

A. I did.

The Master: Are you asking him if he took his place if there was a line?

Mr. Lamb: That is right; if there was a line.

The Master: I suppose if there was he would have to line up.

Mr. Lamb: The point is at times he reported in at 6:47 and there were eight or ten people in line; it would take him a minute to get to the time clock; he was ready to punch in at 6:46, but maybe it would take the line a minute or two to move up until he could punch the clock.

The Master: Was there usually a line in the morning that you had to go through before you could punch?

A. In the morning, yes, there was.

The Master: Was there when you quit at noon, went out?

A. It all depends if I was the first one out or if I was behind in our department. At times there was a small line-up there.

The Master: How about the afternoon when you came back?

A. Coming back there was a line-up again.

The Master: When you went out at night?

A. If I was the first one there, I was the first to

punch out; if there was some ahead of me I had to wait until my turn in the line.

The Master: In other words, was there usually a line or usually just one individual punching out?

A. There was usually a line.

Q. (By Mr. Lamb) I am not sure whether your evidence is clear as to whether the girls ever came back in your department to clean up on Friday?

A. Oh, yes, they did come back to clean up.

Q. Did you tell us the date when you ceased working at The Mt. Clemens Pottery Company?

A. The day I quit?

Q. Yes.

A. The 1st of June, I imagine, around the 1st.

Q. About June 1, 1941?

A. That is, around the 1st of June. • • •

Re-Cross Examination

By Mr. Nunneley:

Q. During this period that you worked there—let's see, when did you start?

A. In the spring of 1937.

Q. During that period did you receive any money for which you did not work?

Mr. Lamb: Objection. That certainly was not brought out in my redirect by a long shot; and, secondly, we have gone into the question of the method by which this plaintiff claims to have compensation owing him. • • •

The Master: My ruling is that the cross-examination is terminated, but they can ask to have it re-opened if they have good grounds.

February 17, 1942

STEVE ANDERSON was thereupon recalled as a witness herein, and having been previously duly sworn, testified further as follows:

Direct Examination (Continued)

By Mr. Lamb:

Q. Mr. Anderson, when testifying before, you advised us of the employment dates, that is, when you began work for The Mt. Clemens Pottery Company.

A. Yes.

Q. (By Mr. Lamb) Will you advise us when? What year, approximately, did you start working for The Mt. Clemens Pottery Company?

A. Approximately ten years ago.

Q. Will you tell us the date up to which you worked?

A. It was the Saturday before the strike. I can't remember dates.

Q. That was back in 1941?

A. 1941, yes.

Q. In the fall of 1941?

A. Yes.

Q. Can you tell us, Mr. Anderson, whether you ever made objection to the practice of the company, over compelling its employees to work for time for which they were not paid?

A. Yes, I had two or three arguments with my foreman about that.

Q. Who was your foreman?

A. Ernest Harms.

Q. Will you give us the content of your conversation with Mr. Harms?

Mr. Nunneley: I object to that unless the time and place is fixed.

The Master: Will you have the time and place fixed first?

Q. (By Mr. Lamb) Fix the time and place, if you can.

A. I couldn't name the dates.

The Master: Fix the time of the conversation to the best of your recollection. Can you fix it with reference to the strike in April of last year?

A. Yes, it was before that. It must have been about six months before the strike.

The Master: About six months before the strike. Where did this conversation take place?

A. On the job; in the dipping house.

The Master: He said it was about six months before the strike, to the best of his recollection, and it took place in the dipping house on the job.

Q. (By Mr. Lamb) Which strike?

A. The first walk-out.

Q. That was 1940?

A. Yes, in April.

Q. You say that took place in the—

A. (Interposing) Dipping house.

Q. Dipping house. Now, will you give us the words or substance of the conversation?

A. I came in what he said was late a few mornings, I guess it wasn't 14 minutes to, and he jumped all over me about it, and I said to him, "What the hell," I said, "We don't get paid until 7 o'clock anyhow." "Well," he says, "if you don't like the way we are running things around here we have men standing outside the door that will work for 50 cents an hour, all we want." So, I kept my mouth shut.

Q. Did you have any further discussions with Mr. Harms, or any other foreman, relative to objecting to the method of compelling the employees to work without compensation?

A. No, I don't believe I did.
Q. Now, who is Mr. Harms; will you tell us who he is?
A. He is foreman of the dipping.
Q. He is the foreman of the dipping department?
A. Yes.
Mr. Lamb: That is all of the direct examination at this time.

Cross Examination

By Mr. Cooper:

Q. Mr. Anderson, I believe you said that you worked in the dipping department?
A. Yes, sir.
Q. About how many people are employed in the dipping department, Mr. Anderson?
A. I imagine around about 75, I imagine.
Q. Could you tell the Master the nature of the operation that you performed?
A. Dipping is the process of dipping the ware in the glaze, it is a liquid glass.
Q. You hold the product in your hand?
A. Yes, and dip it in there, and on flat work you have to shake it, and the cups, you grab a piece of ware and put it in one hand and throw it up on a machine; it is a conveyor belt.
Q. Do you mix this preparation into which you dip the ware?
A. No, that is mixed in a different department.
Q. And it comes to you every morning, does it?
A. Yes.
Q. Then what happens to a piece of ware after you have dipped it into the mixture and put it up on the machine?
A. Well, they have girls there sponging, and other girls taking it off.
Q. That is—
A. (Interposing) That is on cups.

Q. A girl, in regard to cups, a girl follows your operation by taking the cup after you have dipped it in the glaze and set it up on the machine, is that right?

A. Yes, and on flat ware it goes through a different process. They have what they call mangles, the ware is set in these mangles; that went through the mangle and then had girls on the back end taking it off, and then on the colored ware they had big wheels to set the ware on.

Q. Let me ask about flat ware. After you had dipped the piece of flat ware into the glaze, you would set it on another machine, is that right?

A. Yes.

Q. And that machine is called a mangle?

A. No—flat ware, yes, set it on the mangle.

Q. And then the girl would take it off the mangle and perform another operation, is that right?

A. Just take it off, yes, and pile it on the boards.

Q. About how many pieces will the machine carry, the machine that you put the cups on?

A. Just what do you mean, how many will it carry?

Q. How many cups can you put on it at once before the girls begin to take them off?

A. Oh, I imagine six or seven dozen.

Q. How long does it take to dip the cups in the glaze and pick them up again?

A. Oh, about 200 dozen an hour pieces.

Q. And the machine holds how many, did you say?

A. Oh, about four or five dozen maybe. I couldn't say for sure. It is according to how fast you run the machine.

Q. You think it holds at least four dozen?

A. Yes.

Q. About how long would it take you, then, to dip four dozen cups?

A. I never figured it out. It wouldn't take very long.

Q. Just a matter of a minute or so?

A. Yes, it might be.

Q. Then, I presume you wouldn't be dipping more than a minute or so in the morning unless there were girls there ready to take it out, is that right?

6

A. No. We came in in the morning, and took the water—

Q. (Interposing) I don't want to interrupt you, Mr. Anderson, but I just wanted to get at that question. After you started dipping you could dip three or four dozen cups in a matter of a minute or so, is that right?

A. Probably, yes.

Q. And you would place them all on this particular machine after you would dip them?

A. This machine was a conveyor.

Q. And then there would be girls there to take them off the machine and perform another operation?

A. Right.

Q. If it happened on a particular morning that the girl wasn't there, I don't presume you would be able to dip more than a minute or so?

A. No. The foreman is always there to tell us to go over and wash ware, which wasn't our fault that the ware had to be washed.

Q. In other words, it was impossible for you to carry on the dipping operation itself for more than a minute or so unless girls were there to carry on with the succeeding operation, isn't that right?

A. Yes, it would be.

Q. And if you were dipping flat ware instead of the cups, the same thing would be true, would it not?

A. No. This mangle would hold, — oh, that mangle around—well, one mangle would—one mangle it took 21 minutes to go around, I guess, and on the clean mangle it would take them a half-hour to go around, to make the half-turn. They put the ware on the front end of the mangle and it would be a half-hour before it got to the back end before the girls took it off.

Q. Would the mangle be completely clean the night before?

A. Sometimes, and sometimes it wouldn't.

Q. In other words, it might be when you started in the morning, if you started dipping flat ware, there would be

a number of pieces on the mangle left over from the previous day?

A. Yes.

Q. And, then, would it not be true that unless there were girls there to take the flat ware off the mangle and do the next operation you could continue dipping flat ware only until such time as the mangle was filled up?

A. That is right.

Q. As a matter of fact, it was generally left filled at night, was it not, the mangle?

A. Well, sometimes it was, yes.

Q. That was the general rule, was it not?

A. No, not always.

Q. But, I say, usually.

A. It is according to how much ware they had out for the belt.

Q. Well, it would only be on very rare occasions that the mangle would be left empty at night, isn't that right?

A. No, that wasn't very rare occasions, because we were behind on ware quite a bit of the time.

Q. (By Mr. Cooper) Would you say—

A. (Interrupting) That is, you know, to load the belt, the glost belt.

Q. Would you say it happened as frequently as once a week when you finished work in an afternoon the mangle would be all cleaned up?

A. Oh, it happened quite a bit more than that.

Q. Would you say it happened every day almost?

A. No, I wouldn't say every day.

Q. Well, how often would it happen?

A. About half of the time.

Q. About half of the time the mangle was entirely clear when you quit work in the afternoon?

A. That is right.

Q. You are quite sure of that?

A. Yes.

Q. I think you said your residence is in Mt. Clemens?

A. Yes.

Q. Is it pretty close to the pottery, Mr. Anderson?

A. Oh, it is about a mile and a half, I imagine.

Q. Do you walk over to work in the morning?

A. No, I used to drive.

Q. Do you drive your own car?

A. Yes.

Q. Do some of the other pottery workers go with you sometimes?

A. No.

Q. You always drove by yourself?

A. Well, once in a while I would ride with some of the other fellows if my wife wanted to take the car or something.

Q. On those occasions you might ride with somebody who worked in a different department?

A. Yes, that is right.

Q. If it happened that you were riding with someone who worked in a department that started earlier than yours, I suppose you would plan to get there in time so that other person can get to wor'.?

A. Oh, yes. The guy I rode with used to get there around, oh, a quarter after 6:00. He liked to sit around and shoot the bull in the dressing room.

Q. Some of the workers did that, didn't they,— get there early to be sure they wouldn't be late, and sit around and talk after they got there?

A. Yes.

Q. I think the time clocks have been referred to on the record as the north and south time clock. Which time clock did you punch, Mr. Anderson?

A. I think it was the south one.

Q. Then after punching that south time clock you would walk over to the dipping department?

A. Yes, sir.

Q. Showing you Exhibit 1-LL to identify it, being marked as your time card for the pay ending April 8, 1941, and directing your attention to the entry for the second day appearing on that time clock card, would you say

that you punched in the south time clock at 6:49 that morning?

A. I imagine I did.

Q. And you proceeded from there to the dipping department?

A. Yes.

Q. Now, after you punched in the time clock, Mr. Anderson, did you walk along a little aisle to a doorway between the storage room and the time clocks?

A. Yes.

Q. How wide is that doorway?

A. Oh, I imagine it is about half again as wide as that one. About five and a half feet, I imagine.

Q. You guess it is about five and a half feet wide. Then as you turn through that door, that would take you through an aisle between the storage compartment and the place where the time clock was?

A. Yes, that would take us through a little hall, like.

Q. Would you go beyond the kiln, then, or would you walk up another aisle between the kiln and the storage room?

A. We would walk up that aisle between the kiln and the storage room.

Q. How far was it along that aisle about, do you know?

A. Oh, I imagine it was around 120 feet.

Q. 120 feet. About how wide was that aisle?

A. Oh, about eight feet, I imagine.

Q. You think it was eight feet. Do you think there was room for more than one person to walk in the aisle at a time?

A. Oh, yes.

Q. I mean, you feel two people could walk abreast down that aisle?

A. Yes.

Q. More than two.

A. No, I never seen more than two.

Q. As a matter of fact people walked down there in single file, did they not, Mr. Anderson?

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Vol. II

TRANSCRIPT OF RECORD

(Pages 839 to 1056)

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 342

STEVE ANDERSSON, EARL TROMBLEY, LILLIAN SOCIA, ET AL., PETITIONERS,

vs.

MT. CLEMENS POTTERY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 30, 1945.

CERTIORARI GRANTED OCTOBER 15, 1945.

Supreme Court of the United States

OCTOBER TERM, 1945

No. 342

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL No. 1083, UNITED POTTERY WORKERS OF AMERICA, Affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

Petitioners,

vs.

MT. CLEMENS POTTERY COMPANY,

Respondent.

TRANSCRIPT OF RECORD

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

(VOL. II—Index and Pages 529 to 1056, Inclusive)

EDWARD LAMB,
LOWELL GOERLICH,
1014 Edison Bldg.,
Toledo, Ohio,
Attorneys for Petitioners.

FRANK E. COOPER,
BEAUMONT, SMITH & HARRIS,
Ford Building,
Detroit, Michigan,
BERT V. NUNNELEY,
Mt. Clemens, Mich.,
Attorneys for Respondent.

No. .....

United States of America

IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

MT. CLEMENS POTTERY COMPANY,

Appellant,

vs.

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL 1083, UNITED POTTERY WORKERS OF AMERICA, Affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

Appellees

Appeal From the District Court of the United States for the Eastern District of Michigan, Southern Division.
Civil Action No. 2582

TRANSCRIPT OF RECORD

(VOL. II—Index and Pages 529 to 1056, Inclusive)

FRANK E. COOPER,
11th Floor, Ford Building,
Detroit 26, Michigan;

BERT V. NUNNELEY,
Mt. Clemens Savings Bank Building,
Mt. Clemens, Michigan;

BEAUMONT, SMITH & HARRIS,
Of Counsel,
Attorneys for Appellant.

EDWARD LAMB,
LOWELL GOERLICH,
1014 Edison Building,
Toledo, Ohio,
Attorneys for Appellees.

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A. No, they didn't.
Q. They could walk as much as two abreast?
A. I know they could. I have seen them do it.
Q. It would be a tight squeeze, wouldn't it?
A. No.
Q. After you got to the end of that aisle, would you walk over a bridge across the belt?
A. Yes.
Q. How wide was that bridge? . . .
A. About four feet.
Q. About four feet wide. That was about the same width as the aisle, was it?
A. No, it wasn't as wide as the aisle.
Q. Then after you got over that bridge, then would you walk along another aisle alongside of the glost loading department?
A. Yes, for about ten feet, I guess.
Q. That was a wider aisle?
A. Yes.
Q. How wide do you say that was?
A. That must have been about ten feet.
Q. That was about ten feet wide. And how far would you walk along that aisle?
A. Oh, it is according to where I was working. If I was working on the mangle, I would just walk 10, 15 feet, and if I was working on cups, we would just go down through the trucks and walk over to where I was working.
Q. How far to the cups?
A. About 100 feet, I imagine.
Q. After you got down to the end of that aisle, you would ordinarily have to make another turn to get back to your place in the dipping room, would you not, Mr. Anderson?
A. Well, yes, there would be another turn.
Q. There would be another turn?
A. Yes, just over to the left.
Q. Were you walking in between machinery?
A. No.

Q. Just walked right down the aisle.

A. Yes.

Q. Well, did you have a number of work places in the dipping department? How was it set up, was it a line or a number of workers spread through a certain working area, or what?

A. Yes, there were workers worked on different machines, you might as well call it, then on other days I worked in a different department dipping.

Q. It might be that when you got right to your dipping department then you would have to pick your way through the spaces between the different machines until you got to the particular machine you were working on?

A. You could work right over to them.

Q. Between the other machines; in other words, not all the machines were right on the aisle, is that right?

A. What do you mean, the machines?

Q. You spoke of there being work places in the dipping room, as I understood you, which you said could be called "machines"?

A. Oh, hell, we work all over the dipping room, sometimes we work on tubs out in the middle of the floor.

Q. If you are working on a tub out in the middle of the floor, that would mean that there would be other men in the dipping department, who would be more or less on all sides of you, is that correct?

A. No, it would mean there would be a big empty space around you.

Q. What would be beyond the empty space?

A. Probably girls brushing, chipping ware.

Q. Is that also in the dipping department?

A. Yes; well, it is the dipping department, they call it the brushing department.

Q. After you got to the end of the aisle, you would walk by these girls who were doing the brushing work, until you got over to the particular place where you were going to work that morning, is that right?

A. No, you didn't necessarily have to do that; the

brushing girls were working on the left-hand side of the department mostly.

Q. I think it would be clearer on the record if you would call that north or south?

A. Well, it would be the south.

Q. On the south side?

A. Then on the north side, you say then, is where the mangles were and the cup machines.

Q. What was in between there?

A. Well, there was aisles.

Q. You say on the north side there were mangles, is that right?

A. Yes.

Q. And on the south side the girls in the brushing department.

A. Yes.

Q. Well, in between the mangles and the girls in the brushing department, were there other machines or other operations carried on? * * *

A. No.

Q. (By Mr. Cooper): I don't want to mislead you, Mr. Anderson. You mean that the only thing that there was in the dipping department was the mangles and the girls doing the brushing work?

A. That is up until about, I couldn't say how long ago, a couple of years ago, I guess, they got their spray machines in.

Q. Where were the spray machines, were they in between the mangles and the girls doing the brushing?

A. Well, the first one was over there on the south side of the dipping house, that is where the first one was put up, and they put a second one up on the south side of the dipping house that is where the girls were brushing, and then later on they put one on the—let's see, where did they put the next one—I don't know; you have got it there (indicating map); could you tell me where the next one was put in—anyhow, it didn't interfere with our going in to work.

Q. About how much space did the department take up in the plant; was it a space as large as this room?

A. I imagine it is about—it is kind of L-shaped. Take on the east end it is about 120 feet wide, then it goes down, runs west, I guess, east and west, it goes down about 100 feet, about the same width, and then it goes out L-shaped towards the—oh, I don't know the directions, south, oh, about, maybe sixty feet—no, it wouldn't be that much, about twenty feet, then over, there is another wall here, about fifty feet; I can draw a picture of it, I can't explain it.

Q. It was a fairly large area?

A. Yes.

Q. And when you got to the dipping department, you would walk over to the particular part of it where your operations were going to be carried on that day, is that right?

A. Yes, where I was supposed to work that day.

Q. Going back to this particular day that I refer to, Mr. Anderson, let me ask you, it might make the record a little clearer, can you say whether or not the numeral 27 stamped on the time clock card at the extreme left-hand side indicates that that was the 27th day of March, 1941?

A. Yes, I believe it was—it was April, wasn't it, ending April—no, it would be March 27th, that is right.

* * *

Q. (By Mr. Cooper): Do you remember on that particular day whether you drove down or rode down with one of the other workers, Mr. Anderson?

A. Yes, I couldn't say.

Q. You don't remember what time you arrived at the front gate that morning?

A. No.

Q. I presume you don't even remember what time you punched the time clock except as it is indicated on this card, is that right?

A. That is right.

Q. Was there a line of workers at that south time clock that particular morning?

A. I couldn't say.

Q. You don't know whether there was or not?

A. No.

Q. What time did the dipping department go to work that morning?

A. I couldn't say unless I looked at it. And, I couldn't tell what time they went to work by looking at the time card.

Q. Was there a number of departments that started work at seven o'clock.

A. I don't know of any that started at seven.

Q. Do you know what the usual starting time was, as you claim it, for morning shifts?

A: Oh, there were different times. If we had plenty of ware we would probably go in at—he would tell us to come in at fourteen to, and if we didn't have a lot of ware, if we were short of ware for the glost belt, he would tell us to come in at 6:31.

Q. As you stated, the card this morning indicates you punched in at 6:49 on March 27. What time would you say from that your department started that morning?

A. I imagine we started at 6:46.

Q. Do you know what time the glost belt department started that morning?

A. No, I don't.

Q. By the way, do the people working in the glost belt department use the same time clock?

A. Yes.

Q. Do you know what time the decorating department started that morning?

A. No, I don't.

Q. Did the people in the decorating department use that same time clock?

A. Yes, they did.

Q. Were there other departments, as a matter of fact, that used that same time clock?

A. No. I don't know. I believe, oh, the maintenance, I think they used it.

Q. As a matter of fact, weren't there about six hundred employees who used the time clock at that time?

A. They might have but they didn't all punch in at once. They were different.

Q. And, you don't know what departments may have started at particular times that morning?

A. No, I didn't.

Q. You don't remember whether there was a line-up that morning or not in front of the time clock?

A. No, I don't.

Q. You were working in the shipping department that particular day, March 27th?

A. Yes.

Q. Do you remember what your operation was that particular day?

A. No, I don't know whether I was working on cups or flat ware, or colored ware, or what. I don't know.

Q. As a matter of fact, there was usually a line-up waiting to punch the time clock, was there not; a line-up at the time clock?

A. At different times, yes, there was.

Q. There were very likely a number of workers punching the time clock at just about the time you punched it that morning, and then walking over to their various departments, were there not?

A. I imagine there was.

Q. And a good many of them followed this same path that you described that you followed to get over to the dipping department.

A. No. The decorators went right straight through.

Q. Oh, the decorators did start work at the same time, then?

A. I don't know what time they started work. I just know which way they went to work.

Q. Do you remember whether, when you walked down this aisle you described, you were by yourself or were there other workers walking there, too?

A. I don't remember what happened when I punched that clock that morning, whether I was around or riding a bicycle or what.

Q. You think you may have been riding a bicycle?

A. I may have been.

Q. In the plant. You some times would, after you punched the time clock, get on a bicycle and ride over to the department on the bicycle?

A. No.

Q. You always walk from the time clock over to the dipping department?

A. Yes.

Q. And other employees after they punched the same time clock would be walking over to their own departments, would they not?

A. Yes, sir.

Q. As a matter of fact, there was a regular procession of workers from that time clock going over to their respective departments, were there not?

A. There was at different times, yes.

Q. And they just walked along and you walked along with the line, is that right?

A. Just what do you mean by that?

Q. After you punched the time clock did you aim to outstrip all the others, or would you just walk along with the other workers as you walked over to the dipping department?

A. We walked along, but we didn't saunter along. You had to get in there. I imagine I probably had to run in there that morning.

Q. Did you say "Good morning," or pass the time of day with anybody else?

A. No.

Q. As you walked in?

A. No.

Q. You don't mean to say, Mr. Anderson, that after punching the time clock, you never spoke to the other workers as you walked along in this procession?

A. No, you didn't have time to stop and discuss the time of day or anything. If you said anything you would say "Hi" like that, and keep right on going.

Q. You want me to understand that you didn't have time as you walked along—you say you might be walking

two abreast through this aisle, is that right?

A. Yes.

Q. Wouldn't you have time to talk to the fellow alongside of you.

A. Oh, yes, you would to him.

Q. Suppose you saw somebody a little ways behind you that you wanted to talk to do you mean to say you couldn't ask them a question, if you wanted to?

A. No, you didn't dare to stop or anything like that?

Q. Your claim, then, is that you walked right over to the department?

A. Yes.

Q. As a matter of fact, you don't remember, do you, whether you talked to anybody that morning between the time you punched the time clock and the time you got to the department, do you?

A. No, I imagine I had to hurry right up and get in there.

Q. You imagine that?

A. Yes.

Q. Is there a wash room between the time clock you punched, and your department?

A. No.

Q. You are sure about that? I don't want to mislead you.

A. There is one on the other side.

Q. Do you remember whether you stopped in that washroom that morning?

A. No.

Q. You don't remember?

A. No, I never stopped that morning.

Q. You never did?

A. No, sir.

Q. Do you wear overalls or an apron?

A. I used to wear an apron, rubber apron.

Q. When did you put that on?

A. In the morning.

Q. Would you ever turn on any lights after you got to the dipping department?

A. Oh, sometimes.

Q. Sometimes open windows?

A. Yes.

The Master: In connection with this apron, when did you put it on, after you punched the time clock, or before.

A. Yes, after I punched the time clock. When I got to work, yes.

Q. (By Mr. Cooper): Did you change your shoes, too, Mr. Anderson?

A. No, sir.

Q. Did you wear any finger cots or other protective devices on your fingers?

A. Well, when my fingers got sore, I used to put a finger cot on.

Q. When did you put that on?

A. Oh, after a couple hours.

Q. You never put them on before you started working?

A. No—oh, I wouldn't say I didn't, no. I probably did put one on before I started.

Q. As a matter of fact, you very frequently did, did you not?

A. No. We got orders one time not to wear finger cots. We couldn't feel the hard and soft pieces of ware. That was Mr. Doll's orders. That was what Ted Roth told us.

Q. Can you fix the time and place of that?

A. Oh, that was about three years ago.

Q. But after that you continued to put on finger cots?

A. We put them on, yes. When our fingers got bleeding, we would have to.

Q. As a matter of fact, you put on a finger cot to make sure your fingers wouldn't get sore, did you not?

A. No, we didn't.

Q. But if it did get sore, you would put on a finger cot?

A. Sure.

Q. Did you ever smear vaseline on your arms?

A. No, never used it.

Q. By the way, do you use a pail of water sometimes in connection with your dipping operations?

A. Yes, use quite a bit of water.

Q. Would you get your own pail filled with water, or did somebody else do it for you?

A. We would use the water we took off the top of the glaze in the morning, getting it ready.

Q. After you got over to the departmet, you spent some time getting the glaze ready?

A. Yes.

Q. You might take a pail of water off the top of the glaze?

A. Sometimes three or four pails.

Q. Did you ever walk over to the faucet to get this pail of water.

A. No, we never had to.

Q. Some of the other employees did, did they not?

A. Some of the girls, yes.

Q. But you never did?

A. I wouldn't say I never did, no. In fact, I went over during the day and got water.

Q. As a matter of fact, in the morning, there was often a group of people standing around the faucet getting their pails of water, was there not?

A. Yes, that is right.

Q. Isn't it true that if there would be a group waiting to get their pails of water, people waiting to get their water would pass the time of day and say "Hello" to each other?

A. They might. I don't know what they said.

Q. That would take a little time, too, wouldn't it?

A. It might.

Q. Going back to this particular morning, how long did it take you after you punched the time clock, to walk over to the dipping department, if you can remember?

A. Oh, I imagine it wouldn't take a minute.

Q. You think you could walk through these aisleways that you described, and through the doors and over the bridge, in less than a minute?

A. Yes.

Q. You don't mean to say you did it in less than a minute every day do you?

A. About a minute.

Q. How long would it take you to put on your apron and finger cots on this particular day?

A. Well, my apron, it had a snap on it. All I would do is just stick my arms in it and snap it in the back and it was on.

The Master: Where did you get your apron from?

A. I bought it uptown.

The Master: I mean, when you went in the dipping department, where was your apron?

A. Oh, it was hanging on the post where I worked.

Q. (By Mr. Cooper): As a matter of fact, you can't remember exactly how long it took you on this particular morning, can you, Mr. Anderson? You don't know exactly what time you first started dipping ware into glaze that morning, do you?

A. What morning?

Q. March 27th.

A. No, I couldn't swear to it.

Q. Anything that you would try to tell me in fixing the time would just represent your best guess, would it not.

A. Yes.

Q. Now, as a matter of fact, the dipping department didn't really get functioning until your group was all there, ready to go, did it?

A. Well, I don't know whether I worked with the group. I might have just worked with one girl.

Q. Suppose the girl wasn't there, you wouldn't really get going until she was there, would you?

A. Oh, no, I have to get my glaze ready. That takes as high as a half hour.

Q. You wanted to get there in time to have the glaze stirred up so that you could start production as early as possible, I presume?

A. I presume so, yes.

Q. Because the more pieces you got dipped, the greater your earnings were, isn't that right?

Mr. Lamb: Objection. I think it is argumentative.

Mr. Cooper: I think it is proper cross examination.

The Master: I think it is all right on cross examination.

A. Well, that is one thing I never could find out. I put out as high as 2,000 dozen cups a day, and we were supposed to get paid, I think a dollar a hundred dozen, and the best I ever drawed was $10 a day. * * *

Q. (By Mr. Cooper) Do you mean to say, Mr. Anderson—strike that, please. Suppose you were dipping cups, how many cups were you supposed to dip in a morning?

A. Well, to time myself, I dipped a thousand dozen.

Q. A thousand dozen?

A. Yes.

Q. Well, suppose that on a particular morning you only dipped a hundred dozen, you wouldn't earn as much for dipping a hundred dozen as for dipping a thousand dozen, would you?

A. No, I don't believe it, no. * * *

The Master: Didn't anybody ever tell you when you were there what your rate of pay was based on?

A. I heard it was a gang rate. How they figured it I couldn't tell you.

The Master: Did you ever ask the foreman what the basis of your pay was?

A. Yes, but he didn't know. * * *

The Master: You worked there ten years without knowing what your rate of pay was?

A. I couldn't tell within $10 what I was going to draw on pay day.

The Master: Not what you were going to draw, but they didn't tell you how much you were going to get for a cup turned out, or some other basis of pay that you were supposed to be getting?

A. No. I have heard a dozen different rumors. I heard

they used to get $1, and then $1.35, and then I heard we got 98 cents. I never knew.

The Master: 98 cents, and $1, and $1.35 for what?

A. For the same ware. Three different versions. • • •

Q. (By Mr. Cooper, continuing) You say, Mr. Anderson, when you first started to work there was a certain deduction from the regular base rate?

A. Yes.

Q. That was when you were learning the trade, was it not?

A. Yes.

Q. And there were meetings held from time to time of employees of the company, were there not?

A. Yes.

Q. Mr. Doll, Senior, would frequently be at the meetings?

A. Once in a while he would be there.

Q. He would quite frequently walk out through the plant, would he not?

A. Yes.

Q. Almost every day or so, would he not?

A. Yes, sir, I would see him around there pretty near every day.

Q. And he would talk to the employees?

A. He never talked to me.

Q. Did you see him talking to any of the others?

A. He would say hello to me, yes.

Q. He would say "Hello" to you. Now, at these meetings there was discussion about conditions in the shop, was there not?

A. Yes.

Q. Isn't it a fact you were told if you had any questions or complaints, to come right into the superintendent and make them?

A. Yes, we were told that.

Q. As a matter of fact, you never asked any question as to the rate at which you were being paid, of the superintendent?

A. No. • • •

Q. (By Mr. Cooper) You never asked Mr. Doll what your rate was, either?

A. No.

Q. As a matter of fact, when you were doing certain jobs you were paid at a gang rate and on other jobs you were paid according to what you yourself had done, isn't that right?

A. I don't know.

Q. How did the company determine how many pieces you made in figuring out how much your earnings would be?

Mr. Lamb: Objection.

A. That is something I never could find out.

Q. (By Mr. Cooper) Isn't it true, as a matter of fact, that they took your count as to how many pieces you had made?

A. They obviously did.

The Master: They took your own count?

A. Yes.

Q. (By Mr. Cooper) And you were paid on the basis of your own count as to how much work you had done, isn't that right?

A. I don't know how they did, how they paid us.

The Master: Did you submit an account every week to the company of the amount of pieces you turned out?

A. No, every day the girls would turn it in. That is on cups. Then on flat work I used to keep track myself of how many dozens I dipped.

The Master: And the company took your word on that?

A. Yes. • • •

Q. (By Mr. Cooper) And in the case of cups, the company took the girls' count?

A. Yes.

Q. I mean that in certain types of dipping operations, you were paid on the basis of a so-called gang rate, and on other dipping operations you were paid on the basis of your own individual production, were you not?

A. I don't know whether I was or not.

Q. And you want the Court to believe that you worked for The Mt. Clemens Pottery Company for ten years and did not at any time know the rate at which you were being paid?

A. That is right.

Q. And you never asked either the superintendent or Mr. Doll as to what that rate was?

A. No.

Q. And it was always just a surprise to you when you got your pay check, to see what it might be?

A. Yes, it was. In fact, it was a surprise to all of us.

Q. You didn't know whether you were being paid on an hourly rate or on a piece rate?

A. We had no way of telling.

Q. And you didn't know how many hours you had worked?

A. That is right.

Q. And you just took whatever was given to you?

A. We had to take whatever was given to us.

Q. Do you smoke, Mr. Anderson?

A. Yes.

Q. As a matter of fact, you were free to leave your work place during the morning any time you wanted to, were you not?

A. What do you mean, smoke? We were free to go to the toilet; yes.

Q. (By Mr. Cooper) In any event, if you did leave your work place for a few minutes during the morning, you wouldn't punch out, would you?

A. No, sir, that is when we went to the toilet.

Q. What time did you quit work at noon?

A. Oh, different times, sometimes we would quit at five minutes to 12, we would run along like that for a while, and then other times we would work until after 12.

Q. And when you stopped work, you would then take off your aprons, I presume?

A. Yes.

Q. Take off your finger cots?

A. Yes, take off the cots and run for the clock.

Q. Would you wash up right there?

A. Stick your hands in the water.

Q. Would the whole dipping department quit work at the same time?

A. Well, lots of times they would send the brushing girls out ahead of us; I don't say all the time.

Q. Sometimes the whole department stopped at once?

A. Yes.

Q. And you would all walk over toward the time clock?

A. We used to run; we pretty near knocked Mr. Doll down one day.

Q. You were in a hurry to get out. Some days other departments would be stopping the same time at the noon recess, would they not?

A. No, as a rule, we got through say before 12 the belt would work after 12, that would be so there wouldn't be a congestion at the clock.

Q. As a matter of fact, isn't it true when the whistle blew everybody would start right off for the clock and there would be a line-up at the clock again?

A. No, our foreman even put a bell up in our department so we wouldn't quit until he rang the bell; when he rang the bell we would go.

Q. There would be a line-up at the clock as you were going out?

A. No, he would ring the bell so there wouldn't be a line-up, he would stand there with his watch.

Q. You mean there was never a line-up?

A. I wouldn't say "never."

Q. Sometimes there was?

A. Oh, yes.

Q. Going back to March 27, you wouldn't remember whether there was on that day or not?

A. I think on March 27, if you look at it close, I punched out at 11 something.

The Master: Would you remember whether there was a line-up, was the question.

A. No, I couldn't say.

Q. (By Mr. Cooper) After you ate lunch you would come back to the dipping department again for the afternoon's work, is that right?

A. No, we would get our lunch and then smoke a cigaret in the dressing-room there, and whatever time the foreman told us to go in we would go to the clock and punch in.

Q. You weren't in any particular hurry, you had time to eat your lunch and have a smoke and talk a while?

A. Oh, yes.

Q. And then you would ring in and follow the same path back to the dipping department that you had followed in the morning?

A. Yes.

Q. And again you wouldn't know exactly how long that might take you?

A. No, I wouldn't.

Q. And there would be—

A. (Interposing). What do you mean, how long it would take me to what, get in?

Q. You don't know exactly how long it would be from the time you punched the time clock on March 27 after lunch until the time you were dipping cups again?

A. Well, right offhand I couldn't say without looking at the card, I don't believe I worked in the afternoon, did I?

The Master: Exhibit "LL," I believe.

Mr. Cooper: I had it.

Q. (By Mr. Cooper) The time clock card indicates you punched in at 12:34 that afternoon, does it not?

A. Yes. • • •

Q. (By Mr. Cooper) Showing you again, Mr. Anderson, Exhibit 1-LL, and directing your attention to the figures appearing in the column on the extreme right-hand site, you have seen those figures before, have you not?

A. Yes.

Q. As a matter of fact, every day when you punched the time clock the figure for the preceding day would be written in there, would it not?

A. Yes.

Q. You know what that represented, do you not?

A. Well, it represents the hours the company claims I worked, but not the hours shown on the time clock.

Q. In other words, it doesn't represent the elapsed time between the time you punched in in the morning and punched out after work, but it indicates the hours worked?

Mr. Lamb: Just a second. I believe—

The Master: He is asking the witness a question.

Mr. Cooper: Just another attempt at telling the witness what his answer should be.

Mr. Lamb: What are you trying to tell the witness in the question. He says "in other words it indicates the time you worked."

The Master: That is a question the witness can answer any way he sees fit. Read the question.

(Question read by the reporter.)

Mr. Lamb: It is the company's computation.

The Master: That is a proper question and the witness can answer it.

Mr. Lamb: All right, there is an objection to it.

The Master: I will overrule the objection. Will you answer the question? Do you want it read again?

A. Yes.

(The question was repeated by the reporter.)

A. No, it doesn't indicate the hours worked.

Mr. Nunneley: Mr. Lamb has testified.

The Master: I frankly think that objection was in the nature of testimony. • • •

Q. (By Mr. Cooper, continuing): You state, then, Mr. Anderson, that this figure over here was only the company's computation as to the number of hours you worked?

A. Yes.

Q. How many hours do you claim you actually worked on March 27?

A. May I have a pencil?

The Master: What did you say?

A. May I have a pencil?

The Master: Yes. (Handing pencil to the witness.)

A. (Figuring on paper): About 8¾ hours. Maybe I made a mistake; I don't know. Just a minute, here—yes, that is right.

Q. (By Mr. Cooper): Is it your claim, in other words, Mr. Anderson, that you start to work the minute you punch the time clock?

A. Yes, that is what I think.

Q. You claim you were working, in other words, when you were walking along the aisles between the time clock and the dipping department?

A. Yes.

Q. And that if you stopped to say hello to somebody as you were walking over there, you were working then?

A. I don't think I stopped to say hello to anybody.

Q. You don't remember whether you did that day or not?

A. No, I don't think I did.

Q. You don't remember whether you did that day or not? • • •

A. I never made it a practice of talking to anybody when I went to work.

Q. But, on that day you are just guessing, aren't you, whether you did or whether you didn't?

A. No. I am pretty sure I didn't.

Q. How can you remember that particular day?

A. Well, I can remember as a rule.

Q. Do you remember what the weather was like that day?

A. No.

Q. Remember what you were dipping that morning, whether it was cups or flat ware?

A. No.

Q. But, you remember you didn't stop to say hello to anybody as you were walking over there?

A. I can't remember that I didn't. I just say as a rule

I did not. We just went about our business going to work.

Q. You can't remember that you didn't that particular morning?

A. Well, I am pretty sure I didn't.

Q. You figure that you were working if you spent a little time opening windows, or turning on lights?

A. Yes, I did.

Q. Putting on your apron?

A. Yes.

Q. Mixing up your glost?

A. Yes.

Q. Taking water off it?

A. Yes.

Q. If you went over to get a pail of water and waited at the faucet, you figured you were working?

A. That was my work. If the company did not have a big enough faucet for the people to get at, and get back, that was their hard luck.

Q. And you figured you were working if you stopped dipping and took off your apron and washed your hands in the department there?

A. I never washed my hands, just gave them a rinse.

Q. You figured you were working when you were rinsing off your hands?

A. In fact, I rinse off my hands quite a few times during the day, and my face.

Q. Well, you figure you were working when you rinsed your hands there?

A. Yes.

Q. And when you were walking back out to the time clock?

A. Yes.

Q. As a matter of fact, you don't know just how long any of those operations took, do you?

A. Just what do you mean? Wash my hands and face?

Q. Walking over.

A. I washed my face probably every 15 minutes.

Q. I say, you don't know just how much time you spent that day walking over from the time clock to your department over the route you described, and putting on

your finger cots, putting on your work apron, turning on lights if you turned them on, speaking to other workers if you spoke to them.

A. No, I haven't figured it out. * * *

Q. (By Mr. Cooper): Now, Mr. Anderson, when you were engaged in dipping cups, you worked in teams consisting of a man and three girls helping him, did you not?

A. Yes.

Q. And suppose that you stopped to wash your face or left your place of operations during the morning, that would slow up the work of the girls somewhat, would it not?

A. Well, the girls most generally went with us. Well, they didn't go with us, but they went at the same time.

Q. And if they came back a little later, operations would be pretty slow until the whole gang was back ready to start, isn't that right?

A. Yes.

Q. The same thing would be true in the morning, would it not, that you couldn't get going good until your group was there?

A. Well, our group was always there by the time we got ready to go.

Q. You wouldn't be ready to start operations until your group was there, is that right?

A. What do you mean, until the girls were all there, you mean dip?

Q. Going back, I think I asked you whether it was not a fact that if, say, two of the girls didn't show up some morning, production in your particular group would be very slow until those two girls either arrived or were replaced with somebody else, isn't that true?

A. Well, they would send two girls over right away if they didn't show up.

Q. If they could find them, they would send two girls to replace the two that didn't show up?

A. They always had girls to spare. And if we were short, we washed ware.

Q. If one of the girls that morning did not punch in until 6:59, probably operations would be held up a little bit until she was there?

A. Most likely I would be washing wear until they got in.

Q. You might be washing wear?

A. Yes.

Q. But so far as dipping goes, you probably really wouldn't get started dipping until that girl got over there, would you?

A. No, but I would be working just the same.

Q. Now, I have asked you a number of questions relating to just what you did on March 27, 1941. Wouldn't it be true that if I took, say, the next day, and asked you those same questions about just what you did after you punched the time clock, your answers would be the same for the next day as for that particular day?

A. Yes, I imagine it would be.

Q. In other words, you can't distinguish between days, but you are just averaging things up and giving us your best guess?

A. Yes.

Q. Do you remember how much money you made during the year 1938, Mr. Anderson?

A. No.

Q. Showing you Exhibit 2, pointing out to you a figure written in pencil, at the bottom of this column headed "Social Security Deductions," the figure being $2,282.23, does that refresh your recollection as to what your annual earnings were.

A. I imagine I made about that much. • • •

Q. (By Mr. Cooper): And would you say, Mr. Anderson, that in the year 1939 your annual earnings were approximately $2,400?

A. Yes, I imagine so.

Q. Would you say for the year 1940 your actual earnings were approximately two thousand three hundred and some-odd dollars?

A. This is it here (indicating)? Yes.

Q. You think that is about what you earned during the year?

A. That must be it because it is on there. I wouldn't say it wasn't. I wouldn't swear it was.

Q. As a matter of fact, your average rate of earnings were a dollar an hour or better during all that time, weren't they?

A. Yes, I imagine so. It went as high as $1.40, I believe . . .

Q. (By Mr. Cooper): How frequent were your paydays, Mr. Anderson?

A. Every other Friday.

Q. Each pay would cover a two-week period, is that right?

A. Yes.

Q. Does Exhibit 2-A refresh your recollection on the question as to whether or not in the year 1939 you had a pay ending August 8?

A. I couldn't say for sure; I imagine I did.

Q. And another pay ending two weeks later, on August 22?

A. Yes, I imagine so.

Q. And apparently on that pay you received $102.45?

A. Yes.

Q. And then again on September 5, 1939, you had another pay?

A. I guess so, yes.

Q. In between those two, and on August 25, 1939, you also received money aggregating $43.89, did you not?

A. Yes, I guess so.

Q. Now, that didn't represent payment for work performed between August 22 and August 25, did it? . . .

A. Three days—I don't know; say, maybe that was our share in the earnings they told us so much about.

Q. Yes, as a matter of fact you got that as extra compensation, didn't you?

Mr. Lamb: Just a second, an objection.

A. I wouldn't know.

The Master: You are speaking "you got a share in the

earnings as extra compensation," or that particular amount, compensation?

A. Was that when I was on my vacation?

The Master: Did you get a share in the earnings from time to time?

A. That is what Mr. Doll said it was; he didn't want to call it "bonus."

The Master: It was a check that was in addition to your regular pay checks?

A. Yes.

The Master: Christmas time?

A. Yes.

The Master: Did you get one in August? This is in August.

A. It might have been when I had my vacation. I don't know.

Q. (By Mr. Cooper): As a matter of fact, you received payments approximating two weeks' wages or better, in addition to your regular earnings, did you not?

* * *

The Master: I will make this ruling on the record. This is a matter that is in issue, and the question is as to whether the evidence should be taken, and that depends, of course, partly upon whether the law is that the company can set off vacation payments and bonus payments, or payments of that character against overtime work, if it is found by the court that overtime was worked, which was not compensated for at the rate prescribed.

Mr. Lamb has cited Administrator's Rulings which seem definitely to state that such set-off is not permissible. Mr. Cooper has cited one Wisconsin case which I have not read and has said he has other citations on the subject and also argument to make upon it.

Under the Federal rule which I just quoted, the evidence is to be taken unless it clearly appears that it is not admissible. This does not seem to be evidence of a character that will take a great deal of time to take it, and therefore I will rule that the evidence shall be taken subject to the objection, and after the case is submitted, counsel can submit briefs and arguments upon the question of whether or not such set-off is permissible. * * *

February 19, 1942

STEVE ANDERSON, thereupon resumed the stand as a witness herein, and having been previously duly sworn, testified further as follows:

The Master: All right, go ahead, Mr. Cooper.

Before we proceed I would like to ask two or three questions here to get this testimony straight.

Did I understand you to say when you came in the morning to the plant there was usually a line-up in front of the time clock?

The Witness: Oh, I never noticed when I came to the plant. You see, the time clocks are down from the dressing room.

The Master: Well, when you got before the time clock in the morning to check in, was there usually a line-up?

The Witness: No. There were probably three or four waiting. Of course, if I came in what they call late, there would be a line-up.

The Master: I beg your pardon?

The Witness: Sometimes when I would be late there would be another shift.

The Master: How was that worked? What time was the time clock open if the shift started according to the company at 7 o'clock?

The Witness: The time clock was never locked or anything; it was always open.

The Master: Was there a foreman standing there in front of it, or some watchman?

The Witness: There used to be a watchman over there, but he was never there at any specified time.

The Master: Could you go through at any time you came?

The Witness: Oh, you didn't want to get caught going through at any time you came.

The Master: If the company said that the shift is to begin at 7 on a particular morning, could you get there at 6:30 and punch the time clock at that time?

The Witness: No.

The Master: When could you first punch it?

The Witness: If they said to be there at 7—they never told us—

The Master (Interposing): If the shift, according to the company's idea of what a shift is, started at 7, what time could you be there? What time could you punch the time clock then?

The Witness: You couldn't punch it until they told you to.

The Master: Well, what time did shifts normally start there in the morning?

The Witness: They started from about 6:31 on. If they told you to punch in at 6:31 and you punched in at 6:30, the foreman would be right over there to raise the devil.

The Master: Did the foreman tell you from day to day when to punch in the next day?

The Witness: As a rule, yes. He would come along and sometimes we would run probably a week or so—he would say punch in at 14 to until I give you further notice.

The Master: Well, then, suppose he said to punch in at 14 to. Suppose you came at 15 to; what would happen?

The Witness: What do you mean, 15 to? They would raise the very devil. They would likely give you the week off.

The Master: Would you be able to punch the clock at that time, 15 minutes to the hour, if you were to come at 14 to?

The Witness: No.

The Master: Was there somebody there to prevent you from doing it?

The Witness: No, there was nobody there.

The Master: It was just you knew you weren't supposed to do it, and didn't?

The Witness: Yes.

The Master: Did your whole department punch the time clock as a unit at one time?

The Witness: No. Sometimes we did and then most generally the brushing department would be behind on wear so they would go in ahead of us. They would go in probably 15 minutes before we did.

The Master: When your department would go in, did you all go in together? Was that the custom?

The Witness: Yes.

The Master: And separately from the other departments?

The Witness: Yes.

The Master: Well, how many were there in your department altogether?

The Witness: Oh, I should judge about 75, I imagine.

The Master: Now, when 75 men got there, men and women got there at 14 minutes to 7:00, how long would it take you to get through the time clock and all of you get punched in?

The Witness: Oh, I imagine it wouldn't take over at the most a couple of minutes.

The Master: Do you know, after your department went in, as to whether there was another department waiting there to go in?

The Witness: Oh, yes.

The Master: Immediately after you got through?

The Witness: The packing shed used to go in after we did. What time they punched in, I don't know.

The Master: It took you about two minutes to punch in, and then you stated the other day as to how long it took you from the time—that is, I should say it would take 2 minutes for the whole department, you estimate, to punch in, and how long did you say you thought it would take to walk from the clock after you had punched in to your particular department?

The Witness: It would be less than a minute, I imagine.

The Master: What was this department that punched in after you did?

The Witness: The packing shed.

The Master: The packing shed?

The Witness: Yes.

The Master: Do you know if any other departments punched in after they did?

The Witness: I couldn't tell you.

The Master: Go ahead, Mr. Cooper.

Cross Examination (Continued)

By Mr. Cooper:

Q. I presume you knew most of the people who worked in the Shipping department?

A. *Well, yes, I knew quite a* few of them.

Q. You were good friends with a lot of them, weren't you?

A. Yes.

Q. And as you told me the other day, you would frequently get down to the plant before quarter to seven in the morning?

A. Yes.

Q. And you would sit around and spend the time of day talking?

A. Yes.

Q. I suppose you would frequently sit around with people you knew in the Dipping department, and spend the time of day talking?

A. I would sit around with a few of them, yes.

Q. And after the time clocks were opened, you would go through and punch the time clock?

A. What do you mean, after they were opened?

Q. Well, suppose that you got there at 20 minutes to 7:00, could you have gone through the time clock at that time?

A. No, we couldn't.

Q. No.

A. Not unless we were told to.

Q. It wasn't until the watchman opened the clocks, so to speak, that you could go through, was it?

A. I don't know what you mean by that, opening the clocks.

Q. Where would the watchman stand up until 14 minutes to 7:00?

A. Oh, he might be down by the clocks and he might be some place else.

Q. As a matter of fact, he was posted there mostly to keep order, was he not?

A. Yes, I guess he was.

Q. It wasn't the foreman of your department, was it?

A. Well, the foreman of our department, he was standing around there quite a bit. Quite a few of the other foremen were standing around there sometimes.

Q. Sometimes they would be in their departments, too?

A. Yes.

Q. He was ordinarily, was he not, a sort of a watchman who would be standing near the time clock?

A. Yes, I guess there was.

Q. You knew you couldn't ring in at the time clock any earlier than 14 minutes to 7:00?

A. That is right.

Q. When it came time to ring in at the time clock, you would go and pick your time clock card out of the rack, would you not?

A. Yes.

Q. It would be in a numbered slot, would it?

A. Yes.

Q. You would find it that way?

A. Yes.

Q. And there would be, I suppose, about 25 people getting out their clock cards at about the same time, would there not?

A. There might be, yes.

Q. If your claim is that all your department went in at once?

A. If they all went in at once, yes.

Q. Or didn't they necessarily all go in at once?

A. No, they didn't.

Q. They would be more or less strung out over a period of minutes?

A. I guess so, yes.

Q. As a matter of fact, sometimes people working in the glost belt department would be punching in at that same time clock, just about the same time the boys in your department were going in, would they?

A. Sometimes they would, yes.

Q. In other words, sometimes they could punch in at 14 minutes to 7:00 as well as your department could?

A. Sometimes, as a rule, yes. They would let the men punch in and make us punch in according to where our ware was.

Q. And sometimes the glost warehouse would be permitted to punch in at that 14 minutes to 7:00, too, would they not?

A. The glost warehouse?

Q. Yes, don't you have a department there by that name?

A. No, I don't know of a glost warehouse.

Q. Maybe I can get a better name for it. Would the term "glost ware room" straighten it out; do you know what the glost ware room was?

A. I don't remember a name like that.

Q. Do you know of the chippers?

A. Yes.

Q. The chippers sometimes would start going in at 14 minutes to 7:00, would they not?

A. I wouldn't say they did; I imagine they did sometimes.

Q. Do you have any idea how many employees there were working along this glost belt?

A. No.

Q. Don't know whether there were 50 or 100?

A. No, I don't.

Q. Have no idea at all?

A. No.

Q. Do you have any idea how many chippers there were?

A. No, I don't have an idea of that, either.

Q. All you would know would be on these certain mornings there would be more persons than the persons in your dipping department taking out their time clock cards and ringing in?

A. I never noticed what was behind me, or anything like that.

Q. You never noticed what?

A. What was behind me.

Q. Well, did you notice who was ahead of you?

A. Yes.

Q. Would there be people working in these other departments just ahead of you at the time clock sometimes?

A. Yes, when I came in supposedly late I suppose there was.

Q. But you usually didn't come in later than 6:46, did you?

A. Sometimes I came in at 7:01.

Q. Sometimes you came in just at 7:00, didn't you?

A. Sometimes, yes; I wouldn't say just at 7:00.

Q. You wouldn't say you didn't?

A. No, I might have been late, or something like that.

Q. You don't really know then how many employees may have been punching in at this time clock between 14 minutes to 7:00 and 7:00 then?

A. No, the only thing I knew is I would say "what time did you punch in," and somebody would say "7:31," or "6:14," or something like that.

Q. As a matter of fact, there may have been as many as two or three hundred in the glost belt dipping department, the decorators, and the other departments, all going through that same time clock then beween 14 minutes to 7:00 and 7:00, wouldn't there.

A. I don't think so.

Q. Do you think that employees working along the glost belt department go in between 14 to 7:00 and 7:00?

A. I couldn't say.

Q. You just said a little while ago, if I understood you correctly, sometimes they did?

A. Which morning do you mean?

Q. I am not talking about any particular morning; were there some mornings when they did?

A. I don't just know what you mean by that; I imagine there were mornnigs when they came in at 14 to, yes.

Q. You imagine there were mornings when they came in at 14 to?

A. Yes.

Q. It might have been on the same mornings that you came in at 14 to, is that right?

A. Well, it might have been.

Q. Of course when you say "came in at 14 to," you don't mean that you rang the time clock at exactly 14 minutes to 7:00, do you?

A. No, you couldn't punch at exactly 14 to, no.

Q. You couldn't all punch at the same time?

A. No.

Q. As a matter of fact, if you had a group of employees picking out their time clock cards and then inserting them in the time clock, what would you do, pull a lever after you had your card in?

A. This watchman you are talking about is standing there pushing the lever; all we do is drop the card in and he would push a lever and say, "Come on, come on, come on;" I think if you look at some of those cards you will see my time clock card was 'way down before it was punched.

Q. And then you would pull the card out of the clock again?

A. Yes.

Q. And then would you put it back in the same rack?

A. No, keep right on going and the rack is on the other side of the clock.

Q. You would go over on the work side of the clock, so to speak, and would you just throw the card down or would there be a particular card slot?

A. No. Just a slot you put it in.

Q. And I suppose the greater number of employees who were coming in on any particular morning between

14 minutes to 7:00 and 7:00, the more time they would take before they could all get through the time clock there, isn't that right?

A. The company generally arranges so that they weren't there all at once.

Q. Well, you just said, as I understood it, you didn't know what time any of these other departments did come?

A. I know what time the glost belt used to come.

Q. You do know what time the glost belt used to come; what time did it come? * * *

A. Well, some mornings they would pass before we did, and other mornings they would pass after we did.

* * *

(There was an intermission taken while the Master and Counsel for the parties were conferring with Judge Picard.)

The Master: I think I had better state on the record what has transpired here. The parties can make any corrections they wish, objections, or any other statement they wish.

This case was referred to me by Judge Picard, and the question arose as to the method of my compensation. I work strictly on a fee basis and must pay office expenses and have something left over for myself in cases on an average in order to subsist. And, I took the question of fees up with the attorneys at the outset, with a view to getting in a practical arrangement, and if possible, getting compensated on account from time to time during the course of the trial.

It looked as though it might get into a very long trial, the way it was proceeding, if we proceeded in accordance with, at least, the way the defendant believes is the proper method of proceeding and I believe the trial would run into months.

The plaintiff has been able to put up an amount of money equal to, I understand, $300, to defray their 50 per cent of the compensation of the Master, each side paying 50 per cent in the first instance. I have stated to the parties that I think in a case of this type I ought

to get compensated at the rate of approximately $40 each full working day. A large part of that goes to office expenses, and I often do a great deal of work in a case that I do not directly charge for.

That is just by way of background to explain what has come up.

I have taken the matter up with Judge Picard as to the length of time the trial is likely to take, and whether any measure could be taken to short-cut it, and the parties have been participating in one or two conferences with Judge Picard on that question; one, in particular, which just ended.

Judge Picard believes that the trial can be very greatly shortened and has in fact stated that he doesn't see why it should take over a week to try the issues in this case.

* * *

The Master: Then we have those four issues. Are there any others? That is, the 56 minutes per day, or some such amount, extra time worked, as shown by the time clocks, which was not computed by the defendant in paying the men. Second, charity work. Third, the payment of the so-called invisible man. And, fourth, unauthorized deductions for equipment that the employee had to buy from the employer.

Mr. Lamb: That is right. * * *

Q. Steven, I show you Exhibit 1-J, for identification, the same appearing to be your time clock card for the pay ending October 29, 1940. Looking at that, can you state what time your department began to work that week (handing exhibit to witness)?

A. I started work at 6:51; 6:51.

Q. Can you answer the question, what time did your department start to work that week?

A. No, I couldn't.

Q. You don't know when your department started to work?

A. No.

Q. It certainly didn't start to work at 6:46, did it?

A. Well, I didn't.

Q. You didn't?

A. No, not if I punched in at 6:51, I didn't.

Q. You don't have any idea from that, whether your department was supposed to have started at 6:31 that morning or a quarter to 7 or 7:15, or when it was supposed to start?

A. I imagine it started at 6:46.

Q. You think your department started at 6:46 that week?

A. Yes.

Q. In other words, you could punch in as early as 6:46 in the morning?

A. Yes, sure.

Q. You know Rita Schulte?

A. No. I don't know her personally. I have seen her.

Q. Would you recognize her?

A. Yes. I would recognize her.

Q. What department does she work in?

A. You got me. I don't know.

Q. Does she work near Earl Trombley in the glost belt?

A. I don't know whether she does or not.

Q. Do you know Earl Trombley?

A. Yes, I know Earl.

Q. Do you know where he worked?

A. He worked on the glost belt.

Q. Did you hear him testify that Rita Schulte worked right close to him?

A. I heard him say she worked on the belt, but I don't know whether she does or not. I imagine she does.

Q. You imagine she does. She probably is in the glost belt department herself, then?

A. I imagine she is. If he said she is, she probably is.

Q. Showing you Exhibit 5-HH, what time would that indicate that the glost belt department started operating for the pay ending October 29, 1940 (handing exhibit to witness)?

A. Well, it indicates on the card 6:46.

Q. In other words, the same thing as the dipping department?

A. Yes.

Q. Do you know Earl Trombley?

A. Yes.

Q. What department did he work in?

A. In the glost.

Q. Showing you Exhibit 3-HH, to refresh your recollection, what time would you say the glost department started that morning, that week (handing exhibit to witness)?

A. Well, I don't know what time they started. He punched in at 7:12 and 6:46 and 6:31. I couldn't tell by that what time they started.

Q. He was working in the same department as Rita Schulte you said?

A. Yes.

Q. Well, if he was working in the same department and the department started at 6:46 for Rita Schulte, it probably started at 6:46 for Earl Trombley?

A. No, I don't think it is fair to mean that.

Q. In other words, the fact that the time clock was open at 6:46, didn't mean that everybody in the department would be getting in there?

A. No, it doesn't mean that.

Q. Do you know Mrs. Lillian Socia?

A. Yes.

Q. What department does she work in?

A. She works in the dipping house.

Q. Well, then, inasmuch as the dipping department started work at 6:46 the week ending October 29, 1940, according to your testimony, that was presumably the time she was supposed to be there that week?

A. I think I testified we didn't all go in at once; I think I testified the girls would come in sometimes fifteen minutes earlier than we did, and other times I would go into a different department, I wouldn't go into the dipping

house. They had tubs over in where the liner work was, the decorators work, and I would work over there on blue ware.

Q. As you testified—well, do you say now that you don't know from looking at your clock card and Lillian Socia's clock card what time the dipping department opened up that week?

A. I could guess at it, yes.

Q. But you wouldn't know?

A. No, I wouldn't know.

Q. What would your guess be?

A. What time the rest went in? I would say 6:46 on this card here (indicating).

Q. Well, what would you say in Exhibit 7?

A. Well, that is 6:32.

Mr. Lamb: Exhibit 7?

Mr. Cooper: Exhibit 7.

A. 6:33, 6:35, I would say they started here 6:31.

Q. (By Mr. Cooper) Do you mean that Lillian Socia came in at 6:31 that day?

A. No, you will have to ask her what time she came in; I don't know.

Q. You don't know what time you came in that day either, do you?

A. Well, I imagine I came in at the time the card says there, yes.

Q. And as far as you know the dipping department that week started, as you say, at 6:46?

A. Well, as far as I can get it from the card, yes.

Q. And the same thing was true that week of the glost belt department?

A. Which card is that? Let me see them again. No, this one probably came in at a different time, I don't know what time the belt came. He came in at different times after 7—6:31, 6:49, 6:31, I don't know what—

Q. You don't know what time he started?

A. No.

Q. From Rita Schulte's card, Exhibit 5-HH, showing punches in at 6:46 and 6:47 on various mornings, you would say that that week—would you say in that week the girls on the glost belt were coming in at the period between 6:46 and 7?

A. I wouldn't say the girls, I would say Lillian, she was; I don't know if the other girls were.

Q. You don't know whether the department had a regular opening time or not?

A. What do you mean?

Q. I say you don't know now whether there was a time when the people in the glost department were supposed to come in, or whether they weren't?

A. As I said before, they came in at different times.

Q. You mean anyone could come in any time any day, or was there a time when that department was supposed to start; that is what you said a while ago?

A. No, I don't think I said when they were supposed to start.

Q. Now you say they weren't supposed to start at any particular time, do you?

A. No, I don't say that.

Mr. Lamb: You are getting it all tangled up.

A. I said they came in at various times.

Q. (By Mr. Cooper) Various departments came in at various times?

A. Yes.

Q. And you said the week ending October 29, 1940, your dipping department started at 6:46?

A. Let me see the card again.

Q. (Handing card to the witness).

A. (After examining card.) I imagine it was supposed to, yes.

Q. And as far as you can tell from Exhibit 5-HH, Rita Schulte's card, the girls in the glost ware department could punch in that week at any time between 6:46 and 7, is that right?

A. All I know is what that card says; I don't know about the other girls.

Q. Can you answer the question? * * *

A. I guess they could, she did.

Q. (By Mr. Cooper) Do you know Leo Stafford?

A. Yes.

Q. What department was he working in?

A. The packing shed, I guess.

Q. In the packing shed?

A. Packing department I guess they call it.

Q. Looking at Exhibit 8 for identification, the clock card of Leo Stafford, for the week ending October 29, 1940, would you say that employees in the packing shed were permitted to punch in the time clock between 6:46 and 7 that week?

A. Yes, they punched in after we did, I guess.

Q. Between 6:46 and 7 o'clock?

A. Yes.

The Master: Let me see that.

(Exhibit handed to the Master.)

Q. (By Mr. Cooper) Now, it is a fact, isn't it, that employees in the packing shed and in the brushing and dipping department and the glost belt all punched that same time clock?

A. Yes. * * *

Q. As a matter of fact, if you weren't permitted to enter the factory building at all until 7 o'clock, you couldn't have got in as much time dipping, could you?

A. Probably worked us later at night.

Q. Supposing you couldn't get into the building until 7 in the morning, and you were compelled to be out of there clean and away at 4 o'clock, you couldn't have gotten in as much dipping in between, could you?

A. As what?

Q. As if you were permitted to enter some time between 14 minutes to 7 and 7 o'clock, and leave some time between 4 o'clock and 14 minutes after 4?

A. No, I don't imagine you could.

Q. Steve, showing you Exhibit 1-D, your time card for the pay ending December 31st, 1939, that indicates, does it not, that you worked on Wednesday, Thursday, Friday and Saturday in that week (handing exhibit to witness)?

A. Yes, I guess it does. * * *

Q. (By Mr. Cooper, continuing) In other words, those were the only four days you worked during that two-week pay period?

A. December?

Q. Does Exhibit 1-D indicate to you that those four days were the only days you worked during that pay period?

A. Yes, I imagine it does. * * *

Q. (By Mr. Cooper) Showing you Exhibit 2-A, does that refresh your recollection as to whether on December 26th, 1939, you received a pay of $83?

A. Not for four days' work.

Q. No, this was going back to December 26th, that would cover the preceding two weeks?

A. Yes.

Q. And then on December 31, 1939, you got another pay of $36.69?

A. Yes.

Q. Covering, according to the company's records, 30½ hours work?

A. Yes.

Q. Between December 26th and December 31st?

A. Yes.

Q. On this same day, December 31, 1939, you also received a check for $47.80?

A. Yes; a bonus check, yes.

Q. Showing you Exhibit 2-A, does that indicate to you that for the two weeks' pay ending August 8th, 1939, you earned $99.42?

A. Yes.

Q. And that then for the next two weeks ending August 22, 1939, you earned $102.45?

A. Yes.

Q. And were credited with having worked 86¾ hours during that two weeks?

A. Yes.

Q. And then on August 25, 1939, that would be just three days later, wouldn't it?

A. Yes.

Q. You were paid $43.89?

A. Yes.

Q. And that wasn't pay for work done between August 22nd and August 25th, so far as you can tell, was it?

A. It was a vacation check, I guess.

Q. As a matter of fact, you didn't do any work between that period of August 22nd and August 25th? • • •

February 20, 1942

STEVE ANDERSON, thereupon resumed the stand as a witness on behalf of the Plaintiffs, and being previously duly sworn, testified futher as follows:

Cross Examination (Continued)

By Mr. Cooper:

• • •

Q. I show you, witness, Exhibit 1-JJ. That is your time card for the pay ending February 25, 1941, is it not (handing exhibit to witness)?

A. Yes.

Q. Now, the first morning in that pay period the dipping department started at 6:46, is that right?

A. I imagine so, yes.

Q. And the second morning, was that a morning when the department started at 6:46, too? • • •

A. I imagine so.

Q. And the next morning again 6:46?

A. I imagine so, yes.

Q. And then on Monday was 6:46 again the starting time?

A. I imagine so.

Q. And the next day what was the starting time of the dipping department?

A. I imagine 6:32.

Q. And the next day—

A. (Interrupting) Or 6:31.

Q. (Continuing) What was the starting time of the dipping department?

A. I come in at 8:39. I don't know what time.

Q. You don't know what time the department started that day?

A. No.

Q. On this day you punched in at 8:39 the department might have started at 6:31 or 6:46, is that right?

A. It could be possible.

Q. You think the department might have started at 8:45 that morning?

A. No; I could have had the day off that day and they came and got me.

Q. As to that day, you just don't know?

A. That happened quite frequently when I had a day off they would come and get me. Some of the other dippers would be sick.

Q. And, as to that day, you don't know just what the starting time was for the dipping department?

A. No, I wouldn't know.

Q. Now, the next day, what was the starting time for the dipping department?

A. I imagine 6:46.

Q. You say you imagine 6:46?

A. Yes. From what I can make out on the card there. I couldn't swear by looking at a card two or three years ago what time the department started that morning.

Q. Well, it wasn't the time when the department started at 7:01, was it?

A. I wouldn't know that.

Q. Well, I think you testified yesterday that you couldn't punch in before starting time?

A. Some mornings I was ordered in ahead of the rest of the department. When I would be working on the colored ware, and we would be a little short on ware there, I would go in 15 minutes before the rest of our department would go in.

Q. Well, do you mean to say now that the department didn't have an established starting time?

A. Well, for the majority they did, but on occasions such as I just told you about.

Q. If you punched in at 6:46, or shortly thereafter, that would mean that the starting time for the majority of that department that day was 6:46, would it not?

A. It might be 6:46, but if this was one of the times when the foreman told me to come in earlier, the department might start at, say, 7:01, 15 minutes later.

Q. In other words, you say now the department didn't come in as a group?

A. No, sometimes, as I said, they would have some of us come in earlier and some of the times the brushing girls would come in 15 or sometimes as high as half an hour earlier than the dippers.

Q. Well then, on any of the days shown on this Exhibit 1-JJ, you didn't observe, as far as you can recall now, when the other people in the dipping department did come in?

A. No, I couldn't recall now, no.

Q. You wouldn't know when they came in?

A. No.

Q. You do know, though, that they didn't all come in at 6:46?

A. I couldn't swear to that, either.

Q. You know at least that you didn't?

A. That I didn't.

Q. Come in at 6:46 every day shown on the clock card, Exhibit 1-JJ?

A. No, not every day, no.

Q. As a matter of fact, it is true that there is only one day on there when you did come in at 6:46?

A. Yes, that is right.

Q. But you think so far as you can recall that on those days when you punched in at 6:46 or 6:52 or 6:48 or 6:49, that the majority of the department was permitted to come in at 6:46 on that day?

A. Yes, as far as I know, yes.

Q. Showing you Exhibit 1-H, your time clock card for the week ending November 26, 1940; as far as you can tell, what was the time the dipping department started in that morning?

A. I can tell what time I started.

Q. You can tell what time you punched your time clock by looking at it?

A. Yes.

Q. Does that indicate to you that unless it was an exceptional day and you came in before the others, that the department came in between 6:46 and 7:00?

A. Will you state that again, please?

Q. Does that indicate that unless this was an exceptional day when you came in ahead of the rest of your department, that on that day the department punched in between 6:46 and 7:00?

A. I don't know; you asked that question so long I forget the first part of it by the time you get to the last.

Q. I will try and shorten it up. You rang the time clock at 6:52 that morning?

A. Yes.

Q. Do you know what time you were expected to start, do you know what time you were expected to ring in that morning?

A. I imagine 6:46.

Q. You don't know whether you were or not?

A. Well, I know we didn't—we couldn't punch in before we were told to.

Q. Yes, you told us that. You don't know, for instance, whether you were expected to punch in at 6:31 that morning?

A. No, I don't.

Q. If you were supposed to punch in at 6:31 and punched in at 6:52, at least you were not sent home for it, were you?

A. No.

Q. You worked all that day, didn't you?

A. Yes. I think if I was supposed to punch in at 6:31 and came in late like that they likely would have sent me home.

Q. So you don't think you were expected to punch in at 6:31 that day?

A. I don't think so, no.

Q. What time do you think you were expected to punch in that day?

A. I imagine 6:46.

The Master: Were you ever criticized by your foreman or anybody in the department superior to yourself, for coming in late when you came in at 6:48 or 6:49 or 6:52?

A. Yes, the foreman used to call the department together and raise the devil with us.

The Master: When did this happen?

A. Oh, he did that on quite a few occasions.

The Master: What was the foreman's name, again?

A. Mr. Harms, Ernest Harms, and Mr. Roth, also.

The Master: What did he say on these occasions?

A. When he used to give us the devil for not getting in there, when he told us to, we would try to explain different things to him, but he knew it all.

The Master: Was there any talk as to whether you were being 2 or 3 minutes late every day?

A. Yes, he used to come around about that, too.

The Master: Did he do that with you personally or the whole department?

A. The whole department.

The Master: Did he ever single you out?

A. Yes, he gave me the dickens one morning I came in I guess after 7 o'clock, I was 15 minutes late, or something like that, and he had another man on my job; I think I came in at one minute after 7:00, something like that.

The Master: What I am particularly interested in is on these days when you came in late, from 2 to 5 minutes later, 6:48 or 6:52, when you were supposed to be there at 6:46, was there ever any criticism of you personally by your foreman when you came in 2 to 6 minutes late?

A. Yes, he used to raise the dickens with us. "I want you to get up to that clock and stand there until the clock turns."

The Master: Was this at a meeting that he told you that, or did he tell you individually?

A. Well, when we were working on cups, he would get a couple of us and give us the devil. Then he would get a couple of others and give it to them. He wouldn't direct it personally at me, but there was only two of us working on one job.

The Master: He would direct it at the two of you?

A. Yes.

The Master: When did these conversations happen?

A. As soon as we got in.

The Master: Would it be before the first strike took place?

A. Yes, before the first strike. After the first strike he told us we didn't have to come until 7:00. He told us to come in at 7 or 6:45.

The Master: How long before the first strike took place?

A. That was after the first strike he told us that.

The Master: Yes, but with respect to saying you should come in at 6:46, and criticizing you for coming in late, how long before the first strike took place did these criticisms occur?

A. Oh, up until about six months.

The Master: Up until six months before the strike?

A. Yes. And when they found out our union was getting pretty strong, they didn't ride us so bad.

The Master: Did the foreman take your time clock card to you at any time and point out that you were getting there at 6:48 and 6:49 when you should be getting there at 6:46?

A. No, he didn't do that.

The Master: He just told you to get there at 6:46?

A. Yes. In fact, when he told us we should be there at 6:46, he said, "I don't mean 6:50, I mean 6:46." And we are all human, we can't get there at 6:46 in the morning. I think any man that says he done it is telling a lie.

The Master: Go ahead.

Q. (By Mr. Cooper) Showing you again, witness, Exhibit 1-H, in the second day of that pay period, you punched in at 6:55 that day, didn't you?

A. Yes.

Q. And you weren't sent home for that?

A. No, sir.

Q. Do you remember anything said to you that day about the time you punched in the time clock?

A. No, I couldn't remember anything said that day, no.

Q. Do you know what time you were supposed to punch in that morning?

A. I imagine 6:46.

Q. You don't know whether it was, or not? Or, do you know whether it was 6:46?

A. Yes, I am pretty sure.

Q. It was 6:46?

A. Yes.

Q. Now, the next day you punched in at 6:51, didn't you?

A. Yes.

Q. You weren't sent home that day?

A. No.

Q. What time were you supposed to punch in that day?

A. I imagine 6:46.
Q. Do you know whether it was 6:46 or not?
A. Well, I am pretty sure.
Q. You are pretty sure it was 6:46. Do you remember anything said to you that day for punching in at 6:51?
A. No. I punched out at 11:56 that day, too.
Q. What time did you punch in the next day?
A. 6:56.
Q. What time were you supposed to punch in that day?
A. I imagine 6:46.
Q. Don't you know?
A. I am pretty sure.
Q. You worked all that day, didn't you?
A. Yes.
Q. What time did you punch in the next day?
A. 6:52.
Q. What time were you supposed to punch in?
A. I am pretty sure it was 6:46.
Q. And again you worked all day, didn't you?
A. Yes.
Q. Do you remember anything being said to you that day about—
A. (Interrupting) No.
Q. (Continuing) —punching in late?
A. No.
Q. Again the next day you punched in at 6:51?
A. Yes. I imagine it was 6:46, supposed to.
Q. The next day 6:52?
A. Yes.
Q. And the next day at 7.06?
A. Yes.
Q. And the next day at 6:50?
A. Yes.
Q. What time were you supposed to punch in that day?
A. I am pretty sure 6:46.
Q. And then the next day of that pay period, what time did you punch in?

A. 6:51.

Q. What time were you supposed to punch in that day?

A. I imagine 6:46.

Q. Well, was it 6:46 or do you think it might have been 6:40 or 7:01?

A. Well, I am pretty sure it was 6:46.

Q. Do you remember anything being said to you that day about it?

A. No, I don't even know what day it was.

Q. Well, then, there isn't a single day in that two weeks period when you punched in as early as 6:49, is there?

A. No.

Q. 6:50 is the earliest?

A. Yes.

Q. And some of the days you punched in later than 6:50?

A. Yes.

Q. And you weren't sent home any of those days for being late?

A. No.

Q. Now, would you say that the rest of the department probably came in at 6:46 or thereabouts on those days?

A. I imagine so. I wouldn't—

Q. (Interposing) Are you pretty sure of it?

A. It is according to what they were working on, I imagine.

Q. You are pretty sure that was probably—

A. (Interrupting) You asked me, and I am telling you.

Q. I am asking you.

A. I couldn't swear to it, no, but—

Q. (Interposing) You don't think so?

A. In fact, I am pretty sure.

Q. In fact, you are pretty sure?

A. Yes.

Q. Do you know Arthur Baxter?

A. Yes.

Q. Where did he work?

A. Well, he worked dipping, and he worked on the dipping machine on the spray machines.

Q. Is that in the dipping department, too?

A. Yes.

Q. How about Clarence Burgess?

A. He worked in the dipping department.

Q. Nelson Buchtman?

A. Yes.

Q. Catherine May, where did she work? • • •

A. I think she worked in the brushing department.

Q. (By Mr. Cooper, continuing) Was the brushing department in a way a part of the dipping department?

A. Yes, I guess it was.

Q. Was the operation that after a piece had been dipped it would be brushed?

A. No. It was brushed before it could be dipped.

Q. It was brushed before it was dipped?

A. Yes.

Q. The brushing was to remove dust or particles of dirt, is that right?

A. Yes.

Q. Do you know where Luella Rohrbeck worked?

A. She worked in the dipping department.

Q. She was a dipper's helper, was she?

A. Yes. She worked on cups.

Q. Where did George Schroeder work?

A. Well, he worked—he was a dipper, and then he worked on the spray machines.

Q. And they were in the dipping department?

A. Yes, but they didn't come in at the same time as the dippers, as a rule. • • •

Q. Did Mary Sawicki work a spring machine?

A. I think she did; I think she still works on the white spring machine.

Q. That is all a part of the dipping department, isn't it?

A. Yes.

Q. Do you know Louis Thurman?
A. Yes.
Q. Was he a dipper, too?
A. Yes.
Q. And do you know William Wendt?
A. Yes.
Q. He was a dipper, too?
A. Well, he dipped and he carried ware, that is, carried ware off the cups.
Q. Was that last operation outside the dipping department?
A. No, that was in the dipping department.
Q. It is all in the dipping department?
A. Yes. * * *
Q. (By Mr. Cooper) Now, you told us, Steve, that on the first day shown on the card for the pay period ending November 26, 1940, that is Exhibit 1-H, you punched in at 6:52?
A. Yes.
Q. And you said you were pretty sure that 6:46 was the starting time for the dipping department that day?
A. I imagine so, yes.
Q. In fact, you said you were pretty sure?
A. Yes.
Q. Showing you Exhibit 19, what time did Arthur Baxter punch in that day?
A. 6:31.
Q. And Clarence Burgess?
A. 6:31.
Q. And Nelson Luchtman?
A. 6:52.
Q. And Katherine May?
A. 6:51.
Q. And Lonella Rohrbeck?
A. 6:53.
Q. And George Schroeder?
A. 6:52.

Q. And Clarence Schwartz?
A. 6:19.
Q. And Mary Sawicki?
A. 10:46.
Q. And Louis Thurman?
A. 6:51.
Q. And William Wendt?
A. 6:56. Let me take them cards and explain that, will you?
Q. You will have a chance to do that; I want to ask you a few more questions. Now, on the second day shown on that same time clock card, you punched in at 6:55?
A. 6:55.
Q. And there again Arthur Baxter punched in at 6:31 on that day?
A. Yes.
Q. And Clarence Burgess at 6:31?
A. Yes.
Q. And Nelson Luchtman at 6:55?
A. Yes.
Q. And Katherine May at 6:32?
A. Yes, that is right.
Q. And Louella Rohrbeck at 6:52?
A. Yes.
Q. And George Schroeder didn't work that day?
A. No.
Q. And Clarence Schwartz at 6:21?
A. Yes.
Q. And Mary Sawicki at 10:47?
A. That is right.
Q. And Louis Thurman at 6:55?
A. Yes.
Q. And William Wendt at 6:41?
A. Yes.
Q. Going over now to Exhibit 1-JJ again, the second day on that pay period you punched in at 6:52?
A. 6:52, yes.

Q. And Arthur Baxter punched in at 6:51?
A. Yes.
Q. And Clarence Burgess punched in at 6:51?
A. Yes.
Q. And Nelson Luchtman punched in at 6:51?
A. Yes.
Q. And Katherine May at 6:31?
A. Yes.
Q. And Louella Rohrbeck at 6:53?
A. That is right.
Q. And Clarence Schwartz at 6:18?
A. Yes.
Q. And Mary Sawicki at 10:47?
A. Yes.
Q. And Louis Thurman at 6:52?
A. That is right.
Q. And William Wendt at 6:51?
A. Yes.
Q. There was nobody punched in at 6:46 that day, apparently?
A. No, not on those cards.
Q. You wouldn't know, I presume, whether anybody else in the department might have punched in at 6:46 that day or not?
A. Well, if you will get the rest of the cards, I think you will find that they did.
Q. But you don't know. You guess that some of them might have punched in at 6:46?
A. Yes.
Q. As a matter of fact—
A. (Interrupting) I am pretty sure they punched in at 6:46.
Q. As far as you can tell, apparently different people working in the dipping department punched in at quite a variety of times that day, didn't they?
A. Yes.
Q. (By Mr. Cooper) Taking the next day now, being

the third day appearing on Exhibit 1-JJ, you punched the time clock at 6:52 that morning?

A. Yes.

Q. Arthur Baxter came in at 6:52 likewise?

A. Yes.

Q. Clarence Burgess at 6:41—6:51?

A. Yes.

Q. Nelson Luchtman at 6:51?

A. Yes.

Q. Katherine May at 6:31?

A. Yes.

Q. Louella Rohrbeck at 6:53?

A. That is right.

Q. Clarence Schwartz at 6:22?

A. That is right.

Q. Mary Sawicki at 10:46?

A. Yes.

Q. Louis Thurman at 6:52?

A. Yes.

Q. William Wendt at 6:51?

A. Yes. • • •

Q. And you can't remember what time you punched in any particular day?

A. No.

Q. Except as you look at the time clock card?

A. That is right.

Q. You can't remember what time you arrived at the plant at any particular day?

A. No.

Q. You can't remember whether the time clock cards show how many Saturdays, if any, you worked during that period?

A. No, I couldn't. • • •

Q. (By Mr. Cooper): Now let's take Thursday, the second Thursday on this Exhibit 1-H, being your time clock card for November 26, 1940; on that morning you punched in at 6:52, is that right?

A. Right here (indicating), yes.

Q. And William Wendt on that day punched in at 6:38?
A. Yes.
Q. And Louis Thurman punched in at 6:51?
A. Yes.
Q. And Mary Sawicki at 6:52?
A. Yes.
Q. And Clarence Schwartz at 6:51?
A. Yes.
Q. And Louella Rohrbeck at 6:52?
A. Yes.
Q. Catherine May at 6:31?
A. Yes.
Q. Nelson Luchtman at 6:16?
A. Yes.
Q. Clarence Burgess at 6:31?
A. Yes.
Q. And Arthur Baxter at 6:31?
A. Yes.
Q. And the next day you punched in at 7:06?
A. Yes.
Q. And William Wendt punched in at 7:06 too?
A. Yes.
Q. Also Louis Thurman?
A. Yes.
Q. Mary Sawicki at 6:32?
A. Yes.
Q. Clarence Schwartz at 7:06?
A. He punched in earlier, didn't he—yes.
Q. Clarence Schwartz at 7:06?
A. Yes.
Q. Louella Rohrbeck at 7:06?
A. Yes.
Q. Catherine May at 6:32?
A. Yes.
Q. Nelson Luchtman at 6:19?
A. Yes.
Q. Clarence Burgess, 6:31?

A. Yes.

Q. Arthur Baxter, 6:31?

A. Yes.

Q. You would say then, would you not, with reference to these two particular weeks that these employees in the dipping department punched in at the more or less scattered times as shown on the cards, some of which I have asked you about specifically?

A. Yes, those particular employes, yes. • • •

Q. Do you know a dipper by the name of Baxter?

A. Art Baxter, yes.

Q. He worked pretty close to you in the department there, did he not?

A. No, not always.

Q. He did at times? He was in the same department anyhow?

A. At times, yes.

Q. He was in the same department about a year ago, was he?

A. Yes.

Q. You don't know just what time his working day started on any particular day, then, do you?

A. Some days he would come in, when he was working on cups, he would come in fifteen minutes to a half hour before we did, when they were short on cups.

Q. I think you said you are president of Local 1083 of the United Pottery Workers of America?

A. That is right.

Q. You are plaintiff in the suit, of course?

A. Yes.

Q. Steve, did you start this suit because the union was starting it?

Mr. Lamb: Objection.

Mr. Cooper: I think it is a proper question. Motivation is an issue. • • •

The Master (Interposing): I will take the question under advisement and not permit the question to be answered until I am more satisfied of the propriety of the question. • • •

Q. (By Mr. Cooper): Steve, did you talk to anyone about starting this suit before starting it?

Mr. Lamb: Objection. • • •

The Master: I will let him answer the question. • • •

A. Yes.

Q. (By Mr. Cooper): Did you talk about it at union meetings?

A. Yes, I did.

Q. As a matter of fact, the seven or eight individuals named as plaintiffs are all members of the union too?

A. Yes. • • •

Q. (By Mr. Cooper): After the suit was started, did you talk with anybody about the progress of the suit?

A. Yes, I did. • • •

Q. (By Mr. Cooper): As a matter of fact you solicited former employees to sign these designations, did you not? • • •

A. No, I didn't.

Q. Did you ask anybody to sign the designation?

A. No, they volunteered to sign.

Q. So far as any signatures that you secured, you say they came in just voluntarily?

A. Yes. • • •

Q. (By Mr. Cooper): You had one or more of these designations with you at various times, did you, so that if anybody wanted to sign it they could come up and sign it?

A. No, sir, I never had one of those with me.

Q. You never had one of these at any time?

A. No, sir; they were in the hall.

Q. You had it in the hall?

A. Yes.

Q. In the hall of what building?

A. Our Union hall.

Q. Did you tell anybody that they were up there?

A. No, I don't think—well, I told them in the hall that I was starting a suit of my own, and, naturally, well, they wanted to get in on it too. They would tell us what they had to do under the Wage and Hour, just whether they had to come in at 14 minutes to, or whether they charged

them for sponges, and different things like that, and they would sign that, whatever you call it that, designation.

Q. As a matter of fact, didn't you tell them all they had to do was to sign up and they would get a lot of money?

A. No.

Q. Never said anything like that?

A. No, sir.

Q. Never told them whether there was going to be a recovery of a large sum of money?

A. No, I didn't know how much money they would recover. They would get just what they had coming under the Wage and Hour Law. • • •

Q. (By Mr. Cooper): Isn't it a fact that you told some of these people whose names are signed here, that it wouldn't cost them anything to sign up and be represented?

A. No, I don't think I did.

Q. Would you say that you didn't?

A. Yes, I would.

Q. None of these people before they signed ever asked you whether some expense was involved to them?

A. No, I don't think they did.

Q. In becoming represented here?

A. No, I don't think they did.

Q. You don't think that was ever mentioned?

A. No.

Q. You do think no one ever signed it except persons who walked into the Union hall and signed it there, is that right?

A. That is right.

Q. As far as you know, these weren't circulated around at all among the employees or former-employees?

A. As far as I know, yes. No, they wasn't.

Q. By the way, who is paying the expense of this suit?

Mr. Lamb: Objection. • • •

The Master: I will take that whole question under advisement until some authority is produced on it.

Go ahead.

Q. (By Mr. Cooper): Witness, I show you Exhibit 1-LL, your time card for the period ending April 8th, 1941. I ask you whether there is a single morning on that time clock card when you punched in at 6:46?

A. No.

Q. Is there any when you punched in at 7:01?

A. No.

Q. Or at 6:31?

A. No, there isn't.

Q. What is the earliest you punched in any morning during that 2 weeks?

A. 6:48.

Q. And what is the latest?

A. 6:50. • • •

Q. (By Mr. Cooper): Showing you now your time clock card for the period ending March 25, Exhibit 1-KK.

• • •

Q. Are there any days in that pay period when you punched in at 6:46?

A. No.

Q. Or 6:31?

A. No.

Q. Or 7:01?

A. No, there isn't.

Q. What is the earliest you punched in during that two weeks?

A. 6:48.

Q. And what is the latest?

A. 10:46.

Q. Was it about a year ago that you referred to when you said you were required to continue at work until five minutes to 12 and then go out and punch the time clock before 12?

A. I don't know whether it was or not. We punched out sometimes before 12, didn't I? • • •

Q. Oh, you don't think, now, that you did continue work until five minutes to 12 and then hurry over so that you could get punched out before 12 o'clock?

A. Not every day, no.

Q. In other words, you might have quit work sometime between 11:45 and 12:00?

A. Yes. I might have quit work before 11:45.

Q. For instance, on this same Exhibit 1-KK that we were just looking at, indicating—perhaps I could save a little time, if there is no objection, by reading some of these entries.

The Master: Go ahead. You can read them to the witness. He can look on while you are reading them.

Q. (By Mr. Cooper): Indicating that during those two weeks you punched out on successive mornings at 11:53, 11:52, 11:49, 11:54, 11:53, 11:56, again 11:56, 11:55—

The Master: Wait a minute.

Mr. Cooper: Did I mis-read there?

The Master: The second "11:56" should have been "11:55."

Mr. Cooper: Thank you.

Q. (By Mr. Cooper): 11:55 and 11:42. Would you say that on any of those days you were dipping until five minutes to 12 and then be told to hurry over and punch out the time clocks before 12?

A. No.

Q. Showing you now Exhibit 1-JJ, your time clock card—as I understand it, when the dipping operations stopped at lunch time, the first thing that you do after you stop dipping would be to sort of brush off your apron with your hand?

A. No, sir.

Q. Do I understand that you didn't bother about brushing off your apron?

A. No, I had a rubber apron that I wore.

Q. Wouldn't there sometimes be a little material splash up on it that you would like to get rid of?

A. No. We used to brush it off all during the morning.

Q. And kept brushing it off every now and then?

A. Yes.

Q. If you notice something had splashed up on it, you would probably just sweep it off?

A. That is right.

Q. And then you would take the apron off?

A. By that time he told us to get out, I would have my apron off. Just had a snap on the back, and it was unsnapped and I would hang it up, and when we came in in the afternoon the glaze would be there, and we just give it a shake, and the glaze would be off of it.

Q. You would take off your apron before you went out to punch the time clock?

A. Yes.

Q. And you would rinse off your hands and face?

A. Put my hands in and give them a rinse, and we washed in the dressing room where we had warm water.

Q. And take off your finger cot?

A. Yes, I would be taking that off when we would go out. Put it in my pocket.

Q. Then you would walk over to the time clock?

A. Yes.

Q. Now, has it happened in a particular day that some other one of these departments we were talking about quit work a few minutes before 12, you would be mingling with them in the aisle as you went over to the time clock, would you not?

A. Well, we would be walking with them, yes, but we wouldn't—

Q. (Interposing): Yes. I don't suppose if there were several departments emptying out at one time, you could run very fast going over that little bridge that you spoke of, which you crossed going into and coming out of the dipping department?

A. Well, there wasn't several departments crossed that bridge.

Q. You wouldn't say the dipping was the only department that crossed it?

A. No. The dipping and the glost belt.

Q. Going back, then, to the third day on this time clock

card for March 25, 1941, you did all those things and punched out the time clock at 11:49, is that right?

A. That is right.

Q. And that would be figuring that you had been working up until 11:45?

A. 11:45—6.

Q. Showing you now Exhibit 1-JJ, is there any day on that—

The Master: (Interposing): I was just going to point out the first day at that time he went out at noon he is shown on the fourth column, he came in at 6:32 and checked out at 6:39, and came back in at 10:53. I don't know whether you noticed that.

A. I came in and worked a little while, and then he told me to have the day off.

The Master: Wait just a minute.

A. Before we do that.

The Master: You came in at 6:32 and checked out at 6:39. That is a lapse of time of 7 minutes?

A. Yes.

The Master: You couldn't be working long.

A. We would be getting the tub ready while we are waiting. • • •

Q. Now, is there any day shown on this exhibit when you punched in at 6:46?

A. Here?

Q. On that?

A. No.

Q. Or 7:01?

A. No.

Q. Or 6:31?

A. No, there isn't.

Q. What is the earliest you punched in during that pay period?

A. 6:32.

Q. And the latest?

A. 10:50.

Q. Showing you Exhibit 1-HH, your time clock card

for the pay ending February 11, 1941, is there any day on that time clock card, when you punched in at 6:46?

A. No.

Q. Any one you punched in at 6:31?

A. No, there isn't.

Q. Or 7:01?

A. No, sir.

Q. And what is the earliest you punched in during those two weeks?

A. 6:50.

Q. Most of the days on that card appear to be 6:50 or 6:51, don't they?

A. Yes, that is right.

Q. And one day—

A. (Interrupting): 10:51.

The Master: 10:51 or 10:55.

Q. (By Mr. Cooper): Showing you now Exhibit 1-GG, your time clock card for the two weeks ending January 28, 1941, did you punch in at 6:46 on any morning during those two weeks?

A. No.

Q. Or at 6:31?

A. Yes.

Q. That was on Friday?

A. Friday.

Q. Any 7:01's?

A. No, sir.

Q. What is the latest you punched in during those two weeks?

A. 11:01.

The Master: The majority of the entries seem to be 6:51 in the morning, is that right?

A. Yes.

The Master: At least, that is more common than any other figure on that. There is 6:51 and one 6:52, I believe.

Mr. Cooper: I think there are five days when you punched in at 6:51.

A. That is right.

Q. (By Mr. Cooper): Showing you Exhibit 1-F, your time clock card for the period ending January 14, 1941, what is the earliest you punched in during those two weeks?

A. 6:50, I believe.

Q. Is there any time there when you punched in at exactly 6:46?

A. No.

Q. Or 6:31?

A. No, there isn't.

Q. Or 7:01?

A. No.

The Master: All the entries here, with the exception of one that is crossed out, are 6:50, 6:51, and 6:52.

Q. (By Mr. Cooper): Showing you Exhibit 1-E, your time clock card for the period ending December 31, 1940, that was apparently a short pay period, was it not; only one week covered there?

A. Yes, I think that is when they took inventory and changed—

Q. (Interposing): Is there any day during that week when you punched in at 6:31 or 6:46 or 7:01?

A. No.

The Master: It might be noted that there is a 7:31 here, however. The other entries are all 6:51 or 6:52.

Mr. Cooper: And, it would appear that 7:31 might be an error, there being no other entry for that day.

The Master: That is true for that particular day, there is just that one entry.

Q. (By Mr. Cooper): Most of the days that week you were punching in about 6:51 or 6:52, weren't you?

A. That is right.

Q. Showing you now Exhibit 1-F, your time clock card for the period ending December 24, 1940, do you notice any days during those two weeks when you punched in at 6:31 or 6:46 or 7:01?

A. No.

Q. What is the earliest you punched in during those two weeks?

A. 6:50.

Q. Some days it was 6:52, wasn't it?

A. That is right. * * *

Q. Pursuant to the suggestion of the Master that the line of examination we were conducting just before noon be expedited, I will make that attempt. Steve, just glancing over your time clock cards for the year 1940, the same being Exhibit 1-E through Exhibit 1-EE, do you notice any large number of days on which you punched in at precisely 6:31 or 6:46 or 7:01?

A. You mean for me to go through these?

The Master: Before when you were questioning him specifically about some of these cards, were you in the 1940 group?

Mr. Cooper: It started with the 1941 group, if the Court please.

The Master: How far did you go?

Mr. Cooper: And worked back into December, 1940. I think we went through two of the December paydays.

The Master: All right, will you look through the cards, Mr. Anderson, and see if there are many days when you punched in at precisely 14 minutes before the hour or before the quarter-hour, that is, at 6:31, 6:46 or 7:01.

A. He just wants the morning, doesn't he?

The Master: Yes, that is just in the morning.

(Witness examines exhibits.)

The Master: Will you answer the question, then, as to whether there are many days when you punched in at 6:31, 6:46 or 7:01?

A. Yes, a lot of days. I would say the majority of the days.

The Master: I might say this. This isn't testimony, this is my own comment, but since I have been looking over the witness' shoulder as he was going through these exhibits, I note that there are a great many times, and on some cards almost every day, when he punched in at

6:31. There are very few, if any, times when he punched in at 6:46. It seems when he came in before 7:00, the usual time indicated—or shortly before 7:00, the usual time indicated is 6:51 or 6:52.

Would you say most of the days you have reference to are 6:31 and not 6:46?

A. Yes.

The Master: Did you notice any days in which you punched in at 6:46, in going through the cards?

A. No, I don't believe I did.

Q. You punched the time clock on your way to work in the morning, did you not?

A. Yes.

Q. And you punched it out again at night?

A. Yes.

Q. You don't claim that the elapsed time between the time you punched in at the time clock and the time you punched out you were actually at work dipping, do you?

A. No, not actually at work dipping, no.

Q. Now, if the hours were computed by starting with the time you punched in in the morning and figured right up through till the time you punched out in the evening, if I say they were computed on that basis, that is the way you figure, isn't it?

A. Yes.

Q. Then during the period of 40 hours figured that way, you wouldn't get in so much time actually at work in the dipping room within 40 hours, would you?

Mr. Lamb: Objection to the question. * * *

The Master: As I understand it, the question is not—if there was 40 hours elapsed time, taking simply the time clock records, that is 40 hours from the time you punched in in the morning until the time you went out at noon, until the time you punched in in the afternoon and the time you punched out at night, then less than 40 hours would have been spent in the dipping room itself. Is that the question you are getting at?

Mr. Cooper: That is right.

The Master: Can you answer?

A. Yes, it might have been.

Q. (By Mr. Cooper): Now, as I understand it—and, less time would actually be spent dipping, wouldn't it?

The Master: Less than 40 hours.

A. Yes.

The Master: When you say "less time," I think that is the word that is somewhat ambiguous. You mean less than 40 hours has been spent.

Mr. Cooper: Less than 40 hours have been spent dipping.

The Master: Is that right?

A. Yes. • • •

Q. That is right. Now, if you computed either an eight-hour day or a forty-hour week, on the basis of the time that you spent from the time you first punched in the time clock until the time you last punched out at the time clock, there would be not all of that time spent in the dipping room, is that right?

A. That is right.

Q. In other words, if you spent forty hours all told counting all the time from the time you punched in the time clock until the time you punched out, only a part of that time would have been spent in the dipping room?

A. Yes.

The Master: Don't you have any idea as to the method by which you were being paid?

A. I heard it was gang rate. How they figured it, I don't know; it was divided up between the gang, so much.

The Master: You said you kept track of your production one time out there?

A. Yes. • • •

The Master: Was it based upon the amount of production you got out during the day? Do you know that much, as to whether it was based on production, or whether it was a straight hourly basis?

A. I imagine it was based on production.

The Master: Was that your understanding?

A. That is what I imagine. What we got an hour, I never knew.

The Master: Well, you just imagined it was based on production, and you don't know whether they were supposed to be paying you on a production basis or not?

A. No, I never heard for sure, and any of the dippers that I talked to didn't know either.

The Master: Was the talk around the shop that you were being paid on a piece work basis?

A. Well, some of the fellows said we did and we were working gang rate.

The Master: You know what a piece work method of payment is as contrasted with an hourly method of payment, do you not?

A. Yes, be paid by the piece.

The Master: But you don't know whether you were being paid on a piece work basis?

A. No, I don't for sure.

The Master: Do you know whether you were being paid on an hourly basis?

A. No, I don't think we were paid on an hourly basis; I don't know. I imagine it was a piece work.

The Master: You think it was a piece work basis?

A. Yes.

The Master: So much per piece that either you produced or a gang of you produced?

A. I imagine so.

The Master: Well, if that is the case, and I am asking this question because Mr. Cooper was trying to get it, not because of my own interest in the problem, but if you were actually in the dipping room working on production 35 hours a week, you would produce less and get paid less than if you were working there 40 hours a week. If you were working 35 hours a week in the dipping room you would normally produce less than if you were working 40 hours a week, would you not?

A. Yes, I believe we would.

The Master: And if you were paid on the basis of production, you would normally get less pay working 35 hours a week than working 40 hours a week. That seems to me to be so elemental, I don't know why it is really necessary to question the witness about it. • • •

Mr. Cooper: It seems a curious thing that counsel for the plaintiffs and the witness seem so reluctant to admit what the Master has characterized as an obvious thing. I would like to have them admit it, though, on the record.

The Master: Isn't it obvious that, as an average proposition, in a 35-hour week, if he were being paid on a piece work basis, he would make less money in a 35-hour week than a 40-hour week?

Mr. Lamb: If the conditions were the same, if there were no stoppages and so on.

The Master: That is why I put in the statement about the average week.

Mr. Lamb: There is no question about it, that is obvious.

The Master: Will the witness agree to that?

A. Yes, sir. • • •

Mr. Lamb: If the conditions are comparable.

A. Yes. I believe so, yes.

Q. (By Mr. Cooper): And you have agreed, as I understand it, Steve, that if that 40 hours was figured starting from the time you punched in in the morning, going up to the time you punched out at night, you would be spending less than 40 hours during that week at your work in the dipping room?

A. Yes, in the dipping room.

Q. In other words, the adoption of that system would mean that you would be, under normal conditions, earning less money in a 40-hour week?

Mr. Lamb: Object. • • •

Mr. Cooper: Suppose we excuse the witness.

The Master: All right, I will excuse you from the room while he is arguing.

(The witness was thereupon excused from the courtroom.) • • •

(The witness resumes the witness stand.)

Q. (By Mr. Cooper): Getting back to this again, if your time was figured on the so-called time clock card basis, you would be spending less time every day in the dipping department?

The Master: Spending less time in the what?

Mr. Cooper: Less time every day in the dipping department.

Mr. Lamb: Less time than what?

The Master: You have a comparative question and you don't state the alternative. You say if your time was figured by this method you would be spending less time.

Mr. Cooper: I will re-phrase my question.

Q. (By Mr. Cooper): You are familiar, Steve, with two methods of computing here, one what we might call the company method; by that I mean are you familiar with the method of computation by which, for example, on Exhibit 1-X, the company figures that you worked eight and one-quarter hours that certain day?

A. Yes.

Q. Let's call that the company method of computing hours worked.

A. Yes.

Q. Now, you claim that there is another way of computing hours worked, is that right?

A. Yes.

Q. And that would be by simply subtracting one time item from the next on the time clock card, is that right?

* * *

A. Yes.

Q. (By Mr. Cooper): You are familiar, then, with two possible systems of computing hours worked?

A. Yes.

Q. Calling one the company system and the other, let's call it the time clock system?

A. Yes.

Q. Now, if you worked 40 hours in a week, computed on the time clock system, think of that and then think of working 40 hours a week, computed on the company system. Now, is that clear so far?

A. Yes.

Q. Isn't it true, Steve, that computing it on the clock card system, fewer of those 40 hours would be spent in the dipping department?

Mr. Lamb: Objection. * * *

The Master: Frankly, I think that is within the scope

of my ruling that it is not a question for the witness, but a question for the Court as to a comparison of the two systems, and I will sustain the objection on that ground.

• • •

Q. (By Mr. Cooper) You told the Master a few minutes ago, did you not, that under normal conditions if you were only working 35 hours, actually working in the dipping room during the week, you would expect to earn less money if you actually worked 40 hours in that same dipping room, that is, the conditions being the same?

A. I think I said "yes" to it.

Q. Didn't you tell the Master a little while ago that under normal production conditions you would expect to earn less money if you worked 35 hours in that dipping room than if you worked 40 hours in that dipping room?

A. Did I say under normal production? I think I said "yes."

Q. Yes. And isn't it likewise true, now, taking it on the basis of a day, that during a normal day's production, if you were actually at work dipping in the dipping room for only seven hours, you wouldn't expect that you would earn as much money as if you were actually dipping for eight hours, would you?

A. No. • • •

Q. Do you know, Steve, or do you remember whether back in 1939 inspectors from the Wage and Hour Division inspected the Mt. Clemens Pottery Company? • • •

A. No, I don't know. • • •

Q. (By Mr. Cooper) Do you know whether any settlement was made out there in 1939 with the approval of the Wage and Hour Division?

Mr. Lamb: Objection.

Mr. Cooper: Just asking if he knows.

The Master: I will overrule the objection.

A. No, I don't know if any was made, any settlement.

Q. (By Mr. Cooper) Do you know whether you received money in any such settlement?

A. No.

Q. Do you mean that you do not know whether you did or not?

A. That is right.

Q. Isn't it a fact that you received an extra check in the sum of $7.30?

A. I think I did.

Q. Oh, you think you did?

A. Yes. • • •

Q. (By Mr. Cooper): What was that extra check for?

A. I don't know. I received a couple of checks like that. Once I received a check for a couple of dollars. I don't know what that was for. I also received a couple of checks from Mr. Doll for umpiring ball games out there. • • •

Q. (By Mr. Cooper): Showing you Exhibit 29-B, for identification, is this the paper you signed at that time (handing paper to witness)?

A. I don't know. I imagine it is; that is my name on there.

Q. That is your name on there?

A. Yes.

Q. And this is a carbon copy. That appears to be your signature written in there, doesn't it?

A. Yes, it looks like it.

SUMMARIZE LINE 16, PAGE 827, THROUGH LINE 25 ON PAGE 830, AS FOLLOWS:

"Exhibit 29 received."

Re-Direct Examination

By Mr. Lamb:

Q. Mr. Anderson, during cross-examination by Mr. Cooper there was some reference to meetings being held among the employees of the Mt. Clemens Pottery Company. Would you be able to tell us where those meetings occurred, and when they occurred?

A. Well, our meetings—we used to have a meeting, I think it was, every Thursday at noon. We would

go up in the cafeteria and they were held right off the cafeteria, and we would go up in the cafeteria and eat our dinner and then we would have to get into the meetings by 12:30, and these meetings were—they had charges in there to show the percentage of thirds, and the foremen would talk to us, bawl some of us out—

The Master (Interposing): Shows what? I didn't understand when you said it showed the percentage of something.

A. Thirds. They had charts for saucers, and a different chart for 9-inch plates, and 7-inch plates, and different charts for cups, and so on, and on these charts it had a regular—I don't know what you would call that line that zig-zags up and down as the percentage goes higher the line goes up.

The Master: A graph or chart.

A. Yes. And, we would discuss that, and there was a regular general meeting that would last probably all the way from 20 minutes to sometimes a half hour.

Q. (By Mr. Lamb): Was it compulsory that you attend these meetings?

A. Oh, yes.

Mr. Cooper: I object to this question and move the answer be stricken. That—

Mr. Lamb (Interposing): I will ask him what his instructions were.

The Master: Ask him why he attended the meetings, and what his instructions were.

Mr. Cooper: And by whom.

The Master: We will get that.

A. I received my instructions from my foreman to be there. In fact, when we had days off we had to come into the shop to attend the meetings.

The Master: When did you receive the instructions from the foremen?

A. We received them at every meeting. He used to say he wanted everybody there.

The Master: How frequently did these meetings occur?

A. About every week until—

The Master (Interposing): Once a week, you mean?

A. Yes.

Q. (By Mr. Lamb, continuing): Did they occur after or before you had punched the time clock? In other words—

A. (Interrupting): This would occur during the noon hour.

Mr. Nunneley: He said "until." When was that until?

Mr. Cooper: Shouldn't that be finished up?

A. Up until, oh, I would say just before the first trouble we had up there, the first walk-out.

Q. (By Mr. Lamb, continuing): Did you say these meetings had occurred before or after you had punched your time clock cards out at noon?

A. After we punched the time cards out.

Q. In other words, you punched your time clock cards out and would you attend these meetings after having had lunch?

A. Yes. And—

The Master (Interposing): How long would these meetings last? Pardon me, did you have something to add to that?

A. I was going to tell about some other meetings.

The Master: Let me first ask about these; how long did these meetings last?

A. They would last various lengths of time. Sometimes they would last, oh, twenty minutes, sometimes a half hour.

Q. (By Mr. Lamb): I think the Master asked who spoke at those meetings?

A. Well, at these noon meetings most generally the foremen would speak and when Mr. Harding was alive he used to come in and speak at the meetings.

Q. Who was Mr. Harding?

A. I don't know; he told me he was the "trouble-shooter" around there, I guess he was a supervisor, or something of that sort.

Q. Did Mr. Doll, Sr., ever appear at those meetings?

A. No; he used to talk to the meetings when we would get the whole group together, get the whole departments, the different departments, we would have a meeting right in the cafeteria after we were through eating. * * *

Mr. Cooper: I might as well move at this time, if the Court please, that this line of testimony be stricken on the ground that there is no foundation for it in the pleadings.

The Master: While this witness is on the stand, I will rule that at present I don't see that it is within the scope of the issues before me.

Mr. Lamb: I would like to make a proffer.

The Master: But you can question this witness on it while he is on the stand. * * *

Q. (By Mr. Lamb): Mr. Anderson, how frequently did you say these meetings occurred?

A. About every week, every Thursday.

Q. And how long did they last?

A. Oh, twenty minutes to a half hour.

Q. And other people in your department were required, for instance, to attend?

Mr. Cooper: If he knows.

A. Well, the girls—

Mr. Cooper (Interposing): Just a minute. There is no showing of the necessary foundation.

Q. (By Mr. Lamb): Tell us who attended the meetings.

A. Well, our meetings at noon, it was just the dippers.

The Master: Does that include the men and women?

A. No, just the men.

The Master: Did all of them attend?

A. Yes, we had to attend. We would catch hell if we didn't. And I believe the girls had their meetings after work at night.

Q. (By Mr. Lamb): Did your time clock cards which have been offered in evidence show the time spent in these meetings?

A. No, we never punched the clock.

Q. That is, you didn't punch the clock as of the time you went into the meeting and out of the meeting?

A. No.

Q. Did you tell us how long each meeting was, how long it lasted, approximately?

A. Various lengths of times. I would say from twenty minutes to a half hour. • • •

Q. (By Mr. Lamb): Calling your attention to the document which the company has marked Exhibit 22, I will ask you if you know Catherine May, if you know who she is, what department she worked in?

A. Yes.

Q. What department did she work in?

A. She was a brusher. That is, the brushing department.

Q. Calling your attention to the next to the last item on Exhibit 22 for the week ending November 26th, 1940, I will ask you to read the time in which she punched her time card?

A. This one?

Q. Yes.

A. 6:32.

Q. And the time that she punched out for lunch?

A. 11:56.

Q. And the time that she punched back from lunch?

A. 12:32.

Q. And the time she punched out at night?

A. 3:56.

Q. I will now call your attention to the last item on that page and ask you what time Catherine May punched the clock?

A. It looks like 6:31. • • •

Q. Now, handing you Exhibit 19, Arthur Baxter of whom you have testified, is it not a fact that he reported in every morning at 6:31 during that two-week period except the very last morning when he appeared at 6:33?

A. That is right.

Q. Calling your attention to Exhibit 20, Clarence

Burgess, is it not a fact that he reported in at 6:31 every morning except on the first Monday, and the—

The Master (Interposing): Saturday.

Mr. Lamb: Saturday.

Q. (By Mr. Lamb): Except on the third item and the sixth item when he punched in at 6:32; is that correct?

A. Yes, sir.

Q. Mr. Anderson, will you advise us whether you have observed the other people in your department and in other departments of Mt. Clemens Pottery Company checking in at the time clock?

A. Yes.

Q. Each day during the time you worked there?

A. Yes.

Q. And will you advise the Court as to the time that—whether what you have testified to as the time necessary to go from the clock to the dipping department as representing less than one minute, does that apply in general to the other employees whom you have observed? * * *

Mr. Cooper: I object to that. * * * In the first place, I don't think there has been a sufficient basis laid for that question. There hasn't been any showing as to why the employees were observed. In fact, the witness' preceding testimony has been a good many employees he didn't observe at all.

In the second place, it involves a conclusion, and it is, obviously, just a guess and nothing more than that. I think a proper question would be who he saw, and when, and what he saw. * * *

The Master: Why don't you restrict it to the dipping department? I presume the other departments he couldn't tell unless they were right next to the dipping department, when they got into the department and what they did after they got in. As to the dipping department, did you observe the other employees punching their time clocks and then going over to the dipping department?

A. Yes.

The Master: Could you say as to how long it took them to get over?

A. Well, it would take about the same as it took me to go over there, go right along, there is no loitering or anything like that.

The Master: Were you faster or slower than the others, or just about the same?

A. Just about the same; I don't know that I was faster or slower.

Mr. Lamb: I think that is all.

Re-Cross Examination

By Mr. Cooper:

Q. With reference to this question as to the time you saw other employees walking over from the time clock to the dipping department, I don't understand that you can name the amount of time that any particular employee took on any particular day?

A. No, of course I can't.

Q. Are you still working for the pottery?

A. No.

Q. When did you quit?

A. I went on strike.

Q. When was that?

A. About three months ago, 13 weeks ago.

Q. Are you still on strike?

A. Yes.

Q. The strike continues in existence?

A. Yes.

Q. Have you taken work any place else?

A. No. • • •

JOHN ALVIN METZ, was called as a witness on behalf of the Plaintiff, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Lamb:

Q. Will you give us your residence address?
A. Route 2, Utica, Michigan.
Q. Have you been employed by the Mt. Clemens Pottery?
A. I have.
Q. Will you give us the dates, the date when you began, or year in which you started work for the Mt. Clemens Pottery Company?
A. 1931, December 26.
Q. And you have worked how long?
A. Well, it would have been ten years this last December.
Q. What department or departments have you worked in, Mr. Metz?
A. Mostly the clay shop. . . .
Q. (By Mr. Lamb) Now, when you refer to the clay shop, will you tell us of what you speak when you call it the clay shop?
A. Well, the clay shop is the department where the ware is actually made, that is, forming the ware. It is divided up into three different departments, clay flat, clay cups and clay cast ware, like a sugar bowl or cream pitcher, or something like that, that would be cast ware, something that they can't jigger by hand or tool, they cast it. . . .
Q. (By Mr. Lamb): Are the jigger men in that department?
A. Yes, sir; I was one of them.

Q. I see, you are known as a jigger man?

A. Yes.

Q. Now, will you tell the Master what the operations performed by jigger men are?

A. Well, you have got a man working with you and a girl. The girl is classified as a finisher, and the man is a batter-out. And, the batter-out puts the clay on the mold and shoves it up to the jigger man and the jigger man takes the mold and puts it in a revolving head and it has got a tool like a handle that you pull down and you bring the tool down on that and form the back. By using water on the back you make it nice and smooth, and you have a scraper in one hand and you scrape the edges down so they are even all the way around the mold.

The Master: Then when you get through with that process, is the clay in a soft condition or is it hardened in some way?

A. Well, the clay is in a workable condition, you know, it is not running, or anything, but molds can go through the mangle that we work on, they are kind of warm, and as the clay hits it it more or less keeps it in the same condition; you can put water in the back and the water is just an action of keeping the tool from dragging on the clay and making it rough, and after you take your mold out of the ring you put it up in the mangle, up on the shelf that is going all the time and you are ready for another one. That is what a jigger man does.

Q. (By Mr. Lamb): As I understand it, the mangle is the dryer?

A. That is the dryer, yes. Do you want me to explain it?

The Master: Yes, go ahead.

A. They have got two types there. They have got a steam and a hot-air. The hot-air mangles has 67, 68 shelves in, on a continuous chain, and the jigger head runs with the mangle. The head is set at a certain speed and so is the mangle. And on certain types of ware, small ware, there is some small wares that they put up

7 and 8 molds to a shelf, and what we figure, there is two compartments to a shelf, there is 68 double compartments to a round.

The Master: Then when it is put in the mangle, is that just at room temperature, is it dried at room temperature, or is heat supplied?

A. There is heat supplied to it. On the steam mangles, it comes from the boiler room. And this is going all the time. As it goes around, it simply takes it off the other side.

The Master: I see.

A. And finishes the edges.

Q. (By Mr. Lamb): How many men are in the clay department, Mr. Metz, approximately?

A. You mean the whole clay shop or just flat?

Q. Yes, in the first place, the whole clay shop.

A. The whole clay shop? Oh, I don't know: about 125.

* * *

(A blue-print was then marked Exhibit 30.)

Q. (By Mr. Lamb): Which entrance, then would you use, Mr. Metz.

A. This north side, this clock right here (indicating).

Q. Marked "A"?

The Master: Would you go directly into the time clock?

A. No. I would have to come in there where he has his finger.

Mr. Lamb: At the employees' entrance.

A. Right here.

The Master: Which is indicated the employees' entrance?

A. Yes.

The Master: Then you would go along this long aisle until you got to the time clock?

A. Through the dressing room. That is, our dressing room down there, and cloak room, whatever you want to call it.

Mr. Lamb: Where it is marked M, and toilet, cloak room.

A. Yes.

Q. (By Mr. Lamb): Do you deposit your coat there?

A. I do, and my lunch there.

Q. And your lunch pail. Then proceed to the time clock marked A?

A. Yes. Sometimes we sit in there and talk and smoke until it is time to punch in.

Q. I see. Now, where is the clay shop part of it which you work in? • • •

A. I worked all over that department. That is along the lines marked mangles. • • •

Q. (By Mr. Lamb): Did you tell us how many employees are in the clay shop; that is, the entire clay shop?

A. I told you how many men employees in the clay shop.

Q. And that was how many men?

A. About 125. That is just a guess.

Q. Are there women in the clay shop?

A. Yes, there is.

Q. What type of work do they do?

A. Mostly finishing. Well, now, that mostly. They finish, they handle stock, and then there is emptiers, what they call emptiers, inspectors.

Q. And then these 120 men on your shift in the clay shop, what classifications of men employees are there besides jigger men?

A. Well, there is jigger mens, batter-outs and then the fellows that operate the automatic driers, and there is truckers, and fellows that makes the castors. Castors they call them.

Q. After you punched the time clock, then, did you proceed directly to your post in the clay shop?

A. I did.

Q. And was that true of the other employees in the clay shop, too?

Mr. Cooper: Objection. No foundation.

A. As far as I know. • • •

Q. (By Mr. Lamb): How long would it take you to get to your post in your department?

A. Oh, between a minute and two minutes. It all depends on which end of the clay shop I worked.

Q. In other words, some days you would work on one

end of the clay shop and other days you might work on another?

A. Yes; that applies to weeks, too, sometimes it is a week at a time and a month at a time.

The Master: Did you time yourself on that, or is that your estimate?

A. That is just a guess, knowing what time I started to work lots of morning.

Q. (By Mr. Lamb): Did you advise us whether there were different shifts in the clay shop?

A. There was.

Q. Did you work different shifts?

A. I did.

Q. And the time when you work and the shifts you work will be indicated in the time clock cards which have been handed to us by the defendant?

A. They will. • • •

(The time clock cards were thereupon marked Exhibits 31, 31-A to 31-Z, and 31-AA to 31-LL.)

Mr. Lamb: We offer the exhibits.

Mr. Cooper: In the first place, they have not been identified, but assuming that the witness will identify them as being his time clock card, I object to their admission on the ground that they are not relevant. • • •

The Master: I would like to look it over at my leisure, but on the question of the admissibility in evidence, I am quite clear in my mind that these are admissible in evidence. The plaintiffs have a theory of the case. You dispute their theory. But it is one of the things in issue here, and I will overrule the objection. • • •

Q. (By Mr. Lamb): I would like to have you tell us, Mr. Metz, the names of other employees known to you who work in the clay shop and were similarly situated and did similar work to that which you performed?

• • •

SUMMARIZE FROM LINE 21, PAGE 866, THROUGH LINE 4, PAGE 869, as follows:

"Walter Selk, Alfred Erke, Robert Daniels, Carl Schoof, Ray Wiley, Paul Frazo. Joyce Brousseau was a finisher on flat ware. Wells Clay was a bat-

ter-out. Albert Schiappacasse was another jigger man."

Q. Will you tell the Master the approximate time of the day that your shift worked? Was it morning and afternoon, or afternoon and evening or what?

A. Well, all four of them. In the clay shop on flat ware and the cups, they run two shifts. The morning shift would start to work most of the time at a quarter to 6 or 14 minutes to 6, and the afternoon shift would punch in at 12:31 and work until 11 o'clock or 10 o'clock or sometimes quarter to 12. It all depends how bad they needed the ware. And we changed shifts every week. One week we would work days and the next week we would work nights. That is the way we called it.

Q. So, a group usually works in the clay shop, or do you work individually on piece work usually?

A. A crew is considered three people. You have your jigger man and batter-out and finisher. You are independent as far as running your own job from the other jobs, the other mangles.

Q. Have you always worked on piece work, or have there been occasions when you did day rate work?

A. A few occasions; not very many.

Q. And on those few occasions, what type of work did you do when you were getting a day rate?

A. Worked for Herman Miller out on the dock, or out on cars. Unloading cars.

Q. Unloading cars?

A. Yes. I would get a day off and he would ask me if I wanted to work out there, or tell me to go out there.

Q. Did you ever attend the meetings of the employees called by the management?

A. We had meetings every week.

Q. And were you advised to appear at those meetings?

Mr. Nunneley: Same objection we made before, your Honor.

A. I was. • • •

The Master: I didn't rule on the other employee. I

thought while he was here in view of the fact the charges came up and I didn't have much time to think about it, I would get his testimony in on it, but it does seem to me this is outside the scope of the pleadings and if you want to bring it in you should ask for leave to amend the pleadings.

I believe I will make that ruling and stick to it.

Mr. Lamb: I would like to make a proffer of proof.

The Master: All right, go ahead.

Mr. Lamb: If this witness were permitted to testify, he would answer that he and all other employees of the Mount Clemens Pottery Company, including those represented by this plaintiff, were required to, and did, attend a meeting once a week since the effective date of the Wage and Hour Law; and if this witness were permitted to answer he will testify that said meetings lasted from 15 minutes to a half hour each week, and were addressed by foremen or other supervising officials of the Mount Clemens Pottery Company who advised them as to methods to increase their production and efficiency, and so forth.

Further, that these meetings occurred on company property and that the employees were required to, and did, punch their time clock cards out and then attend the meetings during lunch hours, and returned from the meetings, punched their time clocks and proceeded to work.

Q. (By Mr. Lamb): Mr. Metz— • • •

Q. (By Mr. Lamb): Can you advise me whether or not you were ever required to or did, return to the employer's premises and grease or oil molds?

A. I would like to have that read again.

Q. Did you ever return after working hours or after you punched the time clocks, in pursuance to the employer's instructions, and oil or change molds?

A. I have.

Q. Will you advise us the occasion or occasions when that procedure occurred?

A. I couldn't tell you the exact date.

Q. Will you tell us approximately when it occurred and what you did?

A. I would say a year and a half ago is the best I can give you. I don't know. I have done it different times.

Q. I see. What did you do?

The Master: What did you do?

A. Went back in the shop and finished changing molds or finished oiling molds after I punched out the clock.

The Master: Was this in the afternoon after you had punched out?

A. Afternoon, yes.

The Master: Any particular day?

A. Or, sometimes if I was working on the night shift, I might come in early before punching my clock card in and come back and do work and then punch the clock.

The Master: Any particular day of the week when this was done regularly?

A. Well, the molds which used to come through—they have changed that. That isn't always—you used to come in on a Thursday, I think, and then Friday, and they had a regular mold change chart that come out of the office when a certain job was to change molds or something like that, and on oiling we oil every week. We oil the molds every week.

Q. (By Mr. Lamb): Did that occur after you had punched the time clock card?

A. Sometimes, not always.

The Master: How was it determined—in the first place, how did you happen to come back to do this work?

A. They would tell me to, finish up the job to get it ready for the next morning.

The Master: From the foreman?

A. Yes.

Q. (By Mr. Lamb): What is his name?

A. Robert Fittin. • • •

The Master: Was he your foreman throughout the period you worked in this department?

A. Well, not throughout the whole period; Carl Ster-

ner was my foreman for a while; I worked under Joe Cornish.

The Master: Did you do this extra work while you were there all the time when working under the different foremen, or just when Arthur Fittin was foreman?

A. That was a habit ever since I have been working there, up to last, oh, I would say last year that they done that; done that lots of times.

The Master: Now, you say that on some occasions you punch your time clock out and then came back and did the work and other occasions you did this work before you punched your time clock out?

A. That is right, that was to keep my hours down so they didn't run over 40, 42, 44, whatever it happened to be.

The Master: Was that the determining factor?

A. So I could make more money at the same time, so it wouldn't show too much time on my clock card, to keep my rate up.

The Master: How would you know on a given day you were to do this work before punching it out or after?

A. If we weren't done at 2:30, when we were supposed to stop the job and go out, sometimes he would come around and tell us and sometimes we would go and ask him what we should do.

The Master: In other words, if you got done in advance of the time that your shift was supposed to end you would do the work before checking out?

A. Yes.

The Master: And if you weren't done with your regular work until the shift ended, you would go out and punch your clock out and then come back?

A. Sometimes, and sometimes they would let it carry over. If you worked on a double job, all jobs weren't double, if you worked on a double job the guy that worked on the next shift to you would come in and finish up for you otherwise he had to do part of it anyway, if you worked on a double job.

The Court: Well, what I would like to know is how

you knew whether you were supposed to go out, on a particular day how would you know whether you were supposed to go out and punch your time clock out before doing this work, or whether you were supposed to do the work and afterwards punch the time clock out; you say sometimes you did one and sometimes the other. How could you tell which you were supposed to do?

A. Sometimes he would tell us to do it.

The Master: The foreman would tell you on a given day what you were supposed to do?

A. He would just about know how many hours each one of us had in, just about.

The Court: Were there times then when you made up your own mind about it without awaiting instructions from your foreman?

A. Well, I don't know, I don't remember of any. Sometimes we would go and ask and see what we were supposed to do.

Q. (By Mr. Lamb): Can you give us an estimate of the number of times, for instance in the year 1940, that you came back and changed or oiled molds after punching the time clock?

Mr. Cooper: I object to any estimate, your Honor.

A. I couldn't, anyhow.

The Master: Just a minute; you couldn't estimate?

A. I don't think I could, no.

The Master: I will overrule the objection; the answer is that he couldn't estimate. I will ask you how often was it that you oiled and cleaned the mold?

A. We oiled the mold once a week.

The Master: How often did you clean them?

A. Well, you mean change them?

The Master: Or, change them.

A. Well, that depended on the job. Sometimes it might be once a week, sometimes every two weeks, or sometimes you might run a whole set of molds without changing them once; there was no set period of time.

The Master: There was no regularity on that?

A. No.

The Master: But there was a regularity as to the time of oiling them?

A. Yes.

Q. (By Mr. Lamb): Can you advise me as to what arrangement was made relative to down time, or when machines had broken down?

A. On our particular job there wouldn't be no arrangement, you would just sit around until it got fixed, if it took two hours or three hours, whatever it was.

Q. You just sat there?

A. Sat there.

Q. Were you required to go out and punch your time clock while waiting, or did you just sit there?

A. Well, it depended on how close to the noon hour, or something like that, it was. If it was maybe within a half hour of the noon hour and he had an idea how long it was going to take to fix a job, or anything, he would tell us to go out and punch out and come back in, you know, after we ate, or something like that. That didn't happen too often, not on my particular job.

The Master: What was the usual practice then if the down time wasn't at the noon hour?

A. We just stayed right there, right in the shop.

Q. (By Mr. Lamb): Can you advise us what if any deductions were made from your pay for sponges used on the job?

A. Yes, there was; the finisher used the sponges and we paid for them.

Q. You didn't use the sponges in your job?

A. Well, she used them on the job, but I didn't use them, she used them.

The Master: You mean the girl that was working with you?

A. Yes.

The Master: Would use the sponge?

A. Yes.

The Master: Was a deduction made from her pay as well as yours, if you know?

A. No, it all fell on the jigger man. The jigger man paid for the sponges.

Q. (By Mr. Lamb): The jigger man, including yourself, paid for the sponges used by the girls?

A. Yes.

The Master: Your answer is "Yes"?

A. Yes.

The Master: Speak your answer. How much did they charge for these sponges?

A. 30 and 35 cents, I think. I am not too sure about that, somewhere around there; I think that was the price of them. The finisher would go to the foreman and ask for a sponge order and she would take the order, and I don't know whether he put her name down or my name down, she would take it to the store-room and get the sponge; I don't even know if the price was marked on the sponge.

The Master: How many of these sponges would be used in an average week?

A. Well, it all depends on what kind of ware you had; some ware would use more sponges than others. Certain types you would use three sponges a week, and there were some you would only use three a pay or two week period.

Q. (By Mr. Lamb): That is on the computation sheet, your Honor.

The Master: Yes, but I am just trying to get a rough idea.

Q. (By Mr. Lamb): Can you advise me whether any deductions from your pay were made for any other articles used on or about the job?

A. (No response.)

Q. Gloves or anything else?

A. For pails. We had to pay for our own pails that the finisher used to put the water in. We had to pay for them when we bought them.

Q. You mean that you, as the jigger man, had deductions made from your pay for the pails used by the finishers?

A. That is right.

Q. Now, can you tell the Master how much you were charged for those pails?

A. I think it was 27, 28 cents.

Q. And can you tell us how frequently those charges were made or deductions made from your pay?

A. It all depends how long you could hang on to them, if somebody else didn't get them away from you. There is no way of keeping them locked up or anything. We tried to put names on them or put your number on, but they would disappear, use them over on the automatic machine, turn up at the other end of the shop some place.

Q. Can you tell us whether or not you were advised by the management through an invoice or payroll deduction slip or otherwise, of these deductions?

A. No, sir.

The Master: How did you find out about them, then?

A. Well, sponges, why, it simply would tell us once in a while that she got a sponge today or something like that, and when we got the pails, we would have to get an order from the foreman to get a pail, to go to the stock room to get it.

Q. (By Mr. Lamb): Did you ever discuss this with the foreman, the matter of making deductions for sponges, for instance, from your pay check?

A. Oh, we discussed that at the meetings that we would have after we was done work or before we went into work.

The Master: Were these meetings of your department or meetings of the entire plant?

A. No, of the department; department meetings.

Q. (By Mr. Lamb): Did you ever make known your objection to these deductions from your pay check, to the foreman?

A. Well, we all didn't like it. I imagine I made it known. They finally stopped making the jigger man pay for it and made the finisher pay for it. I don't know why they did it.

Q. Can you advise us about what time that change occurred, what year?

A. I think it was around January in 1941.

Q. January, 1941?

A. Yes.

Q. Can you advise us of any other deductions made from a jiggerman's pay check for equipment or property used on or about the job of anyone?

A. Well, they used to deduct so much, I don't know how much, off of our wages for bisque grinding, something that they did in another department.

Q. They would deduct from your wages?

A. That is right.

Q. In the clay shop, as a jigger man?

A. That is right.

Q. The cost of bisque—

A. (Interrupting): Bisque grinding.

Q. (Continuing):—grinding, which was done in a different department?

A. That is right.

Q. Can you advise us of the department the bisque grinding was done in?

A. It was done down around the dipping department some place, brushing department or some place down in there.

The Master: Pardon me, let me interrupt. How were you paid? What was the method by which you were paid?

A. It was piece-work; so much per hundred dozen.

The Master: Per hundred dozen? What?

A. Pieces.

Q. (By Mr. Lamb): Of what?

A. Well, whatever I was doing. Maybe 5-inch fruits, or saucers, 6-inch fruits, 7-inch plates, 9-inch plates, salads. It all depends what job we was on.

The Master: Who kept track of what job you were on?

A. The finisher kept track and she put it up on the chart in the office. I don't know when they started putting the tickets in the truck, that we had a duplicate, each truck had so many boards. Small ware was 20 boards to the truck and large ware or center ware was 15 boards to the truck. And we got paid according to the number of trucks that was loaded on the bisque belt for a two-week period.

Q. (By Mr. Lamb): Are you able to tell us how much was deducted from your pay check for this bisque grinding that occurred in other departments?

A. Well, I have heard—I couldn't state exactly; I asked one time, or a couple times I went—if I would be short on my pay, what I figured up per hundred dozen, if I was too short, I would ask what they charged me for, and if I remember right, it was 70 cents one pay. I don't know. I couldn't say for sure.

The Master: Did you figure up your pay every week, what you thought you were entitled to?

A. Just about every week. Not every week; every two weeks, every pay.

The Master: Did you keep any records of how you computed it?

A. I used to. I used to keep it day by day.

Q. (By Mr. Lamb): That appears on the computation sheets of the company?

A. It should. Then there was another charge.

The Master: What was that?

A. For inspection. If they held up a truck of ware. And there was a charge for crooked ware. And we would have to go down to the office and find the cost of that if we wanted to know. It wasn't brought to us or wasn't shown on our pay check voucher.

The Master: Was that a deduction that was made every week, or every two weeks period when you were paid?

A. Well, crooked ware was, if you worked on any type of ware that went crooked, it may or may not be your fault if the ware was crooked, but I think they deducted fifteen minutes a day for crooked ware; if you worked on a job that the ware would go crooked as it was drying, or something like that.

The Master: Was that a uniform deduction, the same amount every week, or did that depend on how much crooked ware there was?

A. Well, they had to look it over and they deducted that at once whether there was any crooked on it, or whether there was a whole lot. If they picked out any crooked you had to replace that ware they put on there.

The Master: Would they have to scrap the crooked pieces? Do you know what they did with the crooked pieces?

A. I think they throwed them away.

The Master: Then you were paid so much per hundred pieces, but if some of them turned out to be crooked and unusable, they deducted those pieces and you were only paid on the good ones, is that the idea?

A. We replaced the ones that they took off, and the same went for finishing. A small wearing, 5-inch fruits, would have 15 and five or six dozen on a board, and 24 boards to a truck. If they found—it all depends in what humor the boss is in. If they found seven or eight pieces of bad ware out of a board they would hold the trucker.

The Master: What caused the ware to become crooked?

A. On crooked ware maybe it would be the clay, the texture, or something about that, and it may be caused by the molds.

The Master: Would it depend on the skill of the operator?

A. Some of it sometimes, and sometimes it was on the jigger itself, the machine that you worked on, or the two. • • •

February 24, 1942

JOHN ALVIN METZ, was thereupon recalled as a witness, and being previously duly sworn, testified further as follows:

Direct Examination (Continued)

Mr. Cooper: With reference to the testimony Mr. Metz gave the last part day, if your Honor please, I desire to present at this time two motions to strike. The first one I can state very briefly. I move to strike out of this witness' testimony, because it has not been connected up with the claim of any of the plaintiffs in the case. The second motion is that at least that part of the testimony should be stricken having to do with the general topic of deductions from piece workers' earnings. • • •

The Master: I will overrule that motion and your other motion to strike pertaining to these deductions from pay. I have been wondering a little bit just what the plaintiff's theory is on that, but the matter is in issue under the pleadings. It is part of the issues referred to me. I am going to take the testimony on it, and let that be argued afterwards as to whether it constitutes a violation of the Wage and Hour Act in any way. • • •

Cross Examination

By Mr. Nunneley:

Q. Mr. Metz, how long did you say you have worked at the plant, the pottery?

A. It is 10 years last December 26th.

Q. 10 years last December 26th?

A. I am pretty sure it was 10 years December 26th. The day after Christmas.

Q. During that period what has been your employment? What has been your job? Have you been a jigger man all that time?

A. No. I started out there as baller-out on cups.

Q. You were what?

A. Baller-out on cups.

Q. How long were you at that?

A. About a year and a half.

Q. Then what did you do?

A. Then I was transferred over on batting out flat ware.

Q. Batting out flat ware. You have been at that how long?

A. Well, I don't know. I have been jiggering a little bit better than five years. I don't know for sure.

Q. Little bit better than five years. And, during that period some time in there did you become a jigger man?

A. Yes.

Q. When did you get to be a jigger man?

A. Well, I could get my day out when I first started to jigger.

Q. When did you get the job of being a jigger man? That is a different job than batting out?

A. That is better than five years ago.

Q. That is better than five years ago?

A. Yes.

Q. And the jigger man, since that time is that all you have done, is worked as a jigger man?

A. Well, about the last year we had what they call a split job; two jigger men worked together. • • •

Q. You live over towards Utica?

A. Yes.

Q. How far was that from the plant?

A. I think Utica is nine miles from Mt. Clemens.

Q. How far is it from your home?

A. I live about three miles west of Utica. About twelve and a half miles drive.

Q. You travel back and forth by automobile?
A. That is right.
Q. Alone?
A. No; not all the time.
Q. Who traveled with you?
A. There were times I had three or four or five girls ride with me.
Q. Workers in the plant?
A. That is right.
Q. Who rode with you?

SUMMARIZE FROM LINE 5, PAGE 905 to LINE 25, PAGE 905, AS FOLLOWS:

"Lucille Sabo, Lucille Pretzer. The Savarino girls also rode with me. There were three of them. There was another girl; I can't remember her name now."

Q. They were people who lived out that way, too?
A. That is right.
Q. They lived on your street?
A. Two of them lived on my street and the other two I went out of my road to pick them up.
Q. During how long a period did they ride with you?
A. Oh, I don't know. The last two riding with me, they were riding with me, I guess, since the other strike, the other walk-out, up until this strike.
Q. Which two is that?
A. The two Lucilles there, Pretzer and Sabo.
Q. Did they ride with you before the first walk-out or strike?
A. Well, Lucille Sabo rode about a week or two before the other strike, the other walk-out. I think so; I don't know.
Q. Who rode with you before that strike?
A. There is another girl there. I can't tell you her name right now.
Q. These people you have named, did any of them ride with you before the first strike?

A. Yes, the Savarino girls did.

Q. How long a period did they ride with you before the first strike?

A. Oh, it was off and on. Maybe a couple weeks it would be, then they wouldn't ride for a month or two, then a couple more times.

Q. Did you always drive, or did you take turns with someone else?

A. I always drove.

Q. You drove every day?

A. When my car was in running condition.

Q. And where did they work in the plant?

A. I guess they worked on the cup jobs. • • •

Q. They did not work with you?

A. No.

Q. Were they in the same department?

A. Well, they were in the same department, figuring the clay shop the whole department, that is, cups and flat ware and cast ware. That was all in the clay shop.

Q. Now, on your job as a jigger man or a batter-out, either, you always worked in groups of three, is that right?

A. That is right. • • •

Q. Batter-out, jigger man and finisher. And who did you work with during that period? Who was in your crew?

A. During what period?

Q. During the period of this suit, from 1938 up till the time the suit was started.

A. Up until the time the suit was started?

Q. The time of the first strike, yes.

SUMMARIZE LINE 11, PAGE 908, THROUGH LINE 9, PAGE 911, AS FOLLOWS:

"Robert Daniels. I worked with him for about five months in the summer of 1940, I guess. Before that I worked a couple of months with Joe Versure. I worked with Walter Selk. I think I started to

work with him in December, 1940, and I was still working with him when the strike was called in April, 1941. I worked with Marvin Goldenbogen in the fall or early winter of 1940. I worked with Art Dagno for about a year, probably back in 1939."

• • •

A. That is all I can recall.

Q. Now, the same time while you were doing all this work you had some finishers working with you, didn't you?

A. Yes.

Q. Who were they?

SUMMARIZE FROM LINE 22, PAGE 913, TO LINE 25, PAGE 915, AS FOLLOWS:

"Eleanor Bahorski was the last girl I worked with in there. She was working with me before the first strike. She worked in my group about a year. At various times Jean Tewksbury worked in our group. Maude Raleigh and Martha Raleigh worked in our group. Three or four different periods in 1939 and 1940. That is all I can remember now."

Q. That is all you can remember. Now, can you tell us who your crew was right at the time of the first strike?

A. Wallie Selk, and myself, and I don't know if Eleanor was working then with us or Jean Tewksbury, or Martha. I can't tell you the finisher's name for sure. • • •

Q. (By Mr. Nunneley, continuing) Could you tell us who your entire crew was during any period or any of the last year prior to the strike for one year, who was your entire crew, the three of them?

A. This last year? I couldn't name three because I have had more than that.

The Master: You mean at any given time?

Mr. Nunneley: Give us at any given time, any week.

Q. (By Mr. Nunneley, continuing) Could you tell us who your three were, starting with the first strike and

any week before that? Could you give us any week where you can tell us who your crew was?

The Master: Of course, you don't expect him to give you the dates on that, do you?

Mr. Nunneley: I am trying to get a date, sure.

A. I couldn't give you that, because it is too hard to remember, that is, the date.

The Master: I don't know how he could recall that, to remember dates like that.

A. A year ago, that is—

Q. (By Mr. Nunneley) Then there is no way you can tell the court any time who your crew was so that it can be checked up to see who it was?

A. Not that long ago, no, because a day at a time we may have another finisher and maybe another batter out.

* * *

The Master: Do you know who your regular finisher was supposed to be at that particular time, regardless of whether she was on the job that particular week?

A. I think it was Martha Raleigh.

Q. (By Mr. Nunneley, continuing) How long was she your regular finisher, let us put it that way?

A. Oh, she has worked on these three or four different times, but how long a time I couldn't tell you that.

Q. How long had she been just prior to the first strike? How long had she been your regular finisher?

A. Oh, I would say months. Just a guess, because I don't know for sure.

Q. Well, who else did you have for a regular finisher prior to having Martha Raleigh?

A. I have had Eleanor Bahorski; I had Jean Tewksbury down there in No. 14 when I started to work with Wally. I am pretty sure about that. * * *

Q. Give us your best judgment of the portion of the time—

A. (Interrupting) I couldn't give you no portion of the time, because a double job may run a week and then they would stop and run a single for four weeks.

Q. You know most of the time whether you were working on a double job or a single one. You can tell us that without trying to dodge it.

Mr. Goerlich: He isn't trying to dodge.

A. I am not trying to dodge.

Mr. Nunneley: There isn't any doubt he is trying to dodge.

Mr. Goerlich: Why should he want to dodge it?

Mr. Nunneley: Because he doesn't want to be checked up on it, if you want to know the reason.

The Master: The witness has made some definite statements—

Mr. Goerlich: (Interposing) Why should he want to dodge? The company wants to dodge something.

The Master: During the last four years were you working the majority of the time with a double crew or the majority of the time with a single crew, or was it about half and half?

A. About half and half, as far as I can recall.

Mr. Nunneley: Well, he has answered to you, but he wouldn't answer it to me.

The Master: I think he would have answered if you would have asked it that way.

A. You wanted the time and date. I can't give you that.

Q. (By Mr. Nunneley) I didn't ask you for the time and date. At the time of the first strike, what were you working on, double or single?

A. I am quite sure it was a single job, No. 38.

Q. No. 38, single job?

A. Yes, six inch plain fruits.

Q. Can you tell us any time you were working on a double job, give us any date at all?

A. No. • • •

Q. In other words, what we are speaking of as a double crew, that was a two-shift job?

A. That was a two-shift job. • • •

Q. And work until some time in the afternoon?

A. Yes.

Q. And then the other fellow would take over, is that right?

A. That is right.

Q. And he would take over when you quit in the afternoon?

A. Well, we was supposed to quit at 2:30, stop the job.

Q. Yes.

A. And, oh, clean out the jigger box a little bit, maybe clean off the tools most of the time, clean off the ring, clean the bench out. After we got done, by that time—

Q. (Interposing) He would be there?

A. He would be ready.

Q. What time was he supposed to be there, if you know?

A. 2:31.

Q. 2:31?

A. Was what time they punched in.

Q. The time they punched in. In other words, he was supposed to be there to start when you left off?

A. That is right.

Q. And the operation was continuous; that is right, isn't it?

A. Well, after we done our cleaning up, what we had to do, yes, then he would start to work.

The Master: What time did you say you quit?

A. We was supposed to run the job until 2:30.

Q. (By Mr. Nunneley) You would run the job until 2:30?

A. And he may get in there at 25 minutes to.

The Master: The job isn't going during that five minutes interval?

A. No, the mangle wouldn't be running. There is a certain period of shut-down there.

Q. (By Mr. Nunneley) There would be a shut-down. How long would the shut-down be, normally?

A. Well, that depends on the individuals and on the days and on the type of job that they was on. A big ware job, they had to scrape the block. Tea ware job, it wasn't down quite so long as the big ware job would be, I don't think, as far as I can see.

Q. Didn't he go right on with the same work that you were doing?

A. That is right.

Q. How did you get paid?

A. Piece-work.

Q. I mean, did you get paid in groups of three or groups of six at a time?

A. No, individually. There is a rate set for jigger man and a rate set for batter out and finisher.

Q. But the pieces, were they counted by shifts or counted by the two shifts?

A. They was counted by the shift.

Q. By each shift?

A. Yes.

Q. In other words, your shift, when you quit; who kept track of the pieces, who made the count?

A. Well, the finisher turned in the count to the office, but we didn't get paid on that.

Q. Well, the finisher turned in the count to the office?

A. That is right.

Q. And she was one of your group?

A. That is right.

Q. Working right with you?

A. Yes.

Q. And she turned in how many dozen, or whatever it was you claim that you made that day?

A. Th t is right.

Q. And that went to the office, is that right?

A. Went to the clay shop office.

Q. And then your ware was inspected, was it?

A. Well, they called it—yes, that would be inspection.

Q. It was inspected?

A. The foreman done it.

Q. The foreman checked it over?

A. That is right.

Q. And you were paid on the basis of that count, weren't you, less any deductions that might have been made as you have claimed here?

A. Providing you were—yes, that is right. • • •

The Master; Let us get down to the meat of the testimony.

Let me ask this, witness, how many inspectors were there inspecting this crooked ware?

A. Well, our foreman—oh, the crooked ware? They had one girl and they inspected the ware, that is for crooked. That was her job of going from truck to truck that would be apt to go crooked, and she would look the ware over.

The Master: You say there was a 15-minute deduction from your pay for the inspection. Do you know whether that money was paid over to this girl?

A. That was supposed to be her pay, to pay her.

The Master. I see. Go ahead.

Q. (By Mr. Nunneley, continuing) Let's see, during all the time that you were there, during all the time that you worked as jigger man, there were certain inspection charges that were customarily and always taken, weren't there, from your pay?

A. As far as I would know there was always charges for inspection.

Q. There were charges taken, that is right. You understood that during all the time you were working as a jigger man, that those charges were going to be taken, didn't you?

A. Yes.

Q. So that, as a matter of fact, those things were all part of the job under which you were working; that is true, isn't it?

A. Yes, as far as inspection was concerned.

Q. As far as inspection was concerned. That method of inspection didn't take place on all ware, did it?

A. Not for crooked. * * *

Q. And that has been done, and that was the practice during all the time you worked at that business?

A. As far as I know.

Q. And that is the way you were paid during all the time you worked there?

A. That is right.

Q. And the deduction was a customary part of the business, isn't it, that inspection deduction?

A. That is right. * * *

Q. Yes. Well, then, how much was taken out of your pay?

A. I don't know, I never knew that.

Q. Did you ever make any inquiry?

A. I couldn't say as I did. If I worked on the crooked ware I made different times—I would be short in my pay that I would want to know what the inspection charges was, and all the charges they had against me.

Q. You made the inquiries about that?

A. Yes, I have.

Q. And who did you inquire from?

A. I generally asked my foreman, whoever he happened to be.

Q. He explained it to you, did he?

A. He would call up the office and get the deductions and bring them back to me.

Q. And they would tell you how much the deductions were, wouldn't they?

A. For this and that and everything else.

Q. Can you tell us on any occasion how much the deduction was?

A. I couldn't for crooked, no, because I don't remember anytime that I have asked for crooked ware.

Q. You don't remember any time. On a good many occasions you have asked about your pay?

A. That is right.

Q. And if there was any error, was it corrected; did you ever have an error corrected?

A. Well, I always found out I was always wrong.

Q. They always explained it to you, didn't they, what there was?

A. Well, they were always right.

Q. They were always right?

A. That is right.

Q. Did they ever correct an error for you in your pay?

A. Not for me that I remember of.

Q. Not for you. Never found one that you thought that they thought was wrong, is that right?

A. I guess not.

Q. And you kept right on working just the same?

A. Sure.

Q. Until last spring. And you didn't get fired for inquiring, did you?

A. No. • • •

Q. (By Mr. Nunneley) Now, your deductions for this ware, you say you don't know whose pay the fifteen minutes was figured on?

A. No, I don't; I always figured it was figured on mine.

• • •

Q. Now, this other crew, when we got side-tracked on this crooked business, we started to talk about another crew. Do you know who this other crew was that worked right following you; we will say for the three months before the first strike?

A. No, I couldn't name the men and the girl that worked on that opposite shift.

Q. Couldn't name the man or any of them that followed you right after?

A. No, I don't remember who it was now.

Q. Couldn't name the jigger man that followed you right on the same job?

A. No, not to be sure, I couldn't.

Q. Well, I know, to be sure; you used to see him every day, didn't you?

A. Just about every day.

Q. And you want to tell us you don't remember who he was?

A. That is better than a year ago.

Q. About a year ago?

A. And they may change him around like they did some of the other fellows.

Q. I didn't ask about that, I asked you who that fellow was that worked there normally, that followed you?

A. I think it was Bill—I don't know his last name; I know it but I can't think of it.

Q. Can't think of it, all right. Who was the batter-out that might be working with him?

A. I couldn't tell you that, unless it was Bill Gass, he worked there, worked with this fellow at times, and at that certain time I don't know whether he did or not.

Q. Bill what?

A. Gass, William Gass; Bill Hertenia was the other one—no, wait a minute, that is not it. Yes, Hertenia, that is it.

Q. He was a jigger man?

A. I am pretty sure; you know I don't know for sure.

Q. And Bill Gass was the batter-out. And who was the finisher?

A. I don't know.

Q. You don't know the finisher?

A. No.

Q. Can you remember any others during the entire four-year period, that followed you?

A. Jack Bergland worked on an opposite shift from me one time.

Q. Bergland?

A. Bergland.

Q. Yes.

A. I don't remember who was batting out for him.

Q. You can't remember any of the finishers, or can you?

A. Yes, at the time that he worked with me, I think

his wife was finishing—that is, worked on the opposite shift from me.

Q. Do you remember any others?

A. No.

Q. Now, that double crew business, one week you took the early shift, didn't you?

A. That is right, morning shift. Day shift, we call it.

Q. The morning shift. Then the next week you would take the afternoon shift?

A. Night shift, we would call it.

Q. Night shift?

A. Day and night shift.

Q. Day and night shift. And you went to work—normally what time did you go to work on the morning shift?

A. You are supposed to punch in at fourteen minutes to six.

Q. I asked you what itme you went to work?

A. Well, it all depends what you mean by "work."

Q. I mean working at the job.

The Master: What time did he start production work?

Mr. Nunneley: Yes, working at the job.

A. Well, that wasn't always the same. Some mornings on the way in to work we would pick up boards to take back on to the job, if they was short of boards, and other mornings we would go to the tool room, take them over to the job. We might have to set a tool, get some boards, change a finisher's water, go get it if there was none there, turn on the heat. There was no hard and fast rules what we usually done.

Mr. Goerlich: You mean before you started to jigger?

A. Yes, before I turned out actual production.

Q. (By Mr. Nunneley) Before you turned out actual production?

A. That is right.

Q. You checked in at what time, did you say?

A. Supposed to be 14 minutes to.

Q. Fourteen minutes to seven?

A. To six.

The Master: When you said it was supposed to be fourteen minutes to six, who set that time?

A. The foreman.

Q. The foreman told you you should be there?

A. That is the time he designated for us to punch in.

Q. That was the time the clock was free for you to punch in, wasn't it?

A. That is the time the foreman told us to punch in 14 minutes to six.

Q. Did you do that every day?

A. Not at 14 minutes to, no.

Q. What is the name of the foreman that told you you had to punch in?

A. Robert Fitten.

Q. Who?

A. Robert Fitten.

Q. And that 14 minutes, that 14 minutes to, was a "supposed to" business, wasn't it?

A. What do you mean?

Q. "Supposed to," wasn't it?

A. What was the question?

Q. That 14 minutes, you were supposed to punch in, is that right?

Mr. Goerlich: Tell him what you meant.

A. That is the way we was told to come in, at 14 minutes to.

Q. (By Mr. Nunneley) That is the time you were told to come in?

A. That is right.

Q. But you didn't do it as a general rule, did you?

A. Not at exactly 14 minutes to, no. Maybe 13 minutes to, 12 minutes to, or 11 minutes to.

The Master: Did you sometimes get in before 14 minutes to?

A. It was a very rare occasion, because if we did we would know the night before, he would tell us.

Q. (By Mr. Nunneley) In other words, you couldn't

get by the clock, or normally weren't supposed to get by the clock?

A. We could have punched in, but we wasn't supposed to go in before that. The clock was open.

Q. That is the time that you were permitted to go in there?

A. That is right, 14 minutes to.

Q. And you were not permitted to go in there more than 14 minutes before?

A. Not unless we was told the night before. • • •

Q. (By Mr. Nunneley) You understood, put it that way, that you could not go in before 14 minutes to, didn't you?

A. Unless we were told the night before.

Q. Unless you were told the night before?

A. That is right.

Q. And you could go in at 14 minutes to?

A. We was told to go in at 14 minutes to.

Q. And you could go in at 11 minutes to?

A. If there was enough there at the clock, we would have to wait until 11 minutes to. We couldn't go ahead of the other crowd.

Q. And you could go in at five minutes to?

A. Yes. We generally got hell when we got back on the job when we did.

Q. You would be a little behind if you got in at five minutes to, wouldn't you? You would be a little late. • • •

A. If you want to figure it that way, sure, we would be late according to what we were supposed to go in.

Q. (By Mr. Nunneley) If you didn't go by the clock until five minutes to, you wouldn't be over on the job at the hour, would you, ready to work?

A. That all depended on what we had to do on the way in. • • •

Q. (By Mr. Nunneley) On an ordinary day you went to work, we will say, you punched the clock at five minutes to six. What was the first thing you did after you punched the clock?

A. Put my card in the rack.

Q. Put your card in the rack. Then what?

A. Took off for the job; started to walk to the job.

Q. Started to walk to the job. That is about how far?

A. Well, that all depended on what job you were working on. The clay shop is long, and, I would say an estimate would be 300, 350, 400 feet, somewhere around there, to start in the clay shop. * * *

Q. The first part of the clay shop. Where did you work?

A. I worked all over the clay shop.

Q. You worked all over the clay shop?

A. Yes.

Q. If you were working—did you ever work back by the automatic drier?

A. I worked back there.

The Master: You even worked at these mangles at the extreme left of the map?

A. That is right.

Q. (By Mr. Nunneley) How far would you say it would be back to those?

A. Maybe six or eight hundred feet, I suppose.

Q. Six or eight hundred feet back there, isn't it?

A. That is right.

Q. Do you know how long the whole place is?

A. I do not.

Q. You don't know that. So that your first movement after punching in, as we suggested before, at five minutes to would be to take the walk down to the shop?

A. That is right. If I worked back there I would go down this way.

Q. If you worked back there you would go a way around this other way?

A. If I had a tool or something to pick up. It all depends. * * *

Q. (By Mr. Nunneley) Where would you get the tool?

A. Right down here (indicating), somewhere around in there. That is where it was situated, the tool shop.

Q. Clear away in the back?

A. Clear over here.

Q. From there you would go to wherever you were working?

A. That is right.

Q. If you had that kind of a walk, how long would it take you to walk that six or eight hundred feet?

A. Oh, two or three minutes. Somewhere around that.

Q. Two or three minutes. Then, when you got down there, what did you do? You got down to where you were going to work; what did you do then normally?

A. You mean, to the job?

Q. Yes.

A. Well, you can go out looking for boards, if they happened to be short of boards, or could set a tool or set a spray gun; had to give the finisher clean water; had to turn on the heat.

Q. Yes. How long would all those times take you?

A. If you had to do all of them in one morning, it would take you quite a while, but that didn't always hold true on one morning.

Q. All right.

The Master: Who assigned the different jobs to you? Did the foreman tell you to do them, or did you just sort of—

A. (Interrupting) That was part of your job, I guess, as far as I know.

The Master: On a particular morning that you came there, how would you know whether you were supposed to turn on the heat?

A. You had to have your heat.

The Master: Did each man turn on—

A. (Interrupting) His own heat.

The Master: (Continuing) —his own heat?

A. Individually, yes.

The Master: So that everybody had to do that?

A. Yes.

Q. (By Mr. Nunneley) Everybody had their own heat?

A. Yes, in the mangle.
Q. In his mangle?
A. Yes.
Q. You turn on the heat in your mangle?
A. Yes.
Q. What did you have to do to turn on the heat?
A. Well, steam mangles, the finisher journeyman took care of.
Q. So you didn't have to turn on the steam mangles?
A. And on hot air mangles, you just had a lever to back into the far end of the mangle, put it down so many notches, and turn it on.

The Master: Let me ask you this; all of this preliminary work of getting boards, and turning on the heat and light, and so forth, was that all directed at the particular production job you were working on, or would you carry boards for the whole department?

A. No. Just my job.

The Master: All getting ready for your particular job?

A. If the trucker didn't leave boards there, or didn't leave water, we would have to get our own water or boards, and maybe the truck, we would have to change a tool or something like that, go and get a tool and set it up before we could start the jigger.

The Master: What would you say was the average amount of time it took you to do that work? I know the amount of work you had to do would vary from day to day, but how long would that take?

A. Well, you see there would be two of us doing it, the batter-out and jigger man both, maybe give the finisher water while I was turning on the heat and getting the jigger ready, oh, actual time when we got to the job would be two or three minutes, unless you had to set a tool; if you had to set a tool it took a little bit longer.

Q. (By Mr. Nunneley) It would be at the most, that kind of thing didn't take over a couple of minutes or three minutes?

A. I don't think it did.

Q. On a normal morning when you went back there to get your tool ready and ready to start, a couple or three minutes was all the work that was necessary?

A. About.

The Master: Supposing you punched in at 14 minutes to at the time clock, how long would it take to get down to the department, on an average, the clay shop?

A. Well, it depended on where you worked in the clay shop, it was quite long there.

The Master: Supposing you were working in this first group of mangles (indicating) which you indicated you thought it was 300 to 400 feet from the time clock, how long would it take you?

A. Oh, a minute or 2 minutes, something like that.

The Master: And then it would take you two or three minutes in addition to that on an average to do these preliminary jobs before you could start in on production work?

A. That is right.

The Master: One or two plus two to three would be about four minutes getting from the time clock to your job and doing this preliminary work. If you got to the time clock at 14 minutes to, that would bring it down to 10 minutes to, then what would you do when you had the preliminary work done at ten minutes to the hour?

A. We would generally start to work if the whole crew was there and the clay was on the bench.

The Master: Supposing the whole crew wasn't there?

A. We would have to wait around until he brought us somebody. He generally checked up, he checked up around, oh, I don't know, not any later than five minutes to 6:00 he generally checked up to see if everybody was there.

The Master: Who did the checking?

A. The foreman. * * *

The Master: You have heard some of these other witnesses testify as to the method they used in passing a time clock and they indicated that generally a whole department would pass the time clock as a unit?

A. That is right.

The Master: Was that the method you followed?

A. Well, not the whole clay shop, or not even, let's see, all the flat ware, most all the flat ware would come in at that time.

The Master: How many were in that group?

A. Oh, I think before this other strike they run 14 hand jobs on our shift, that would be 28 men and—

The Master: 14 girls?

A. 14 girls.

The Master: 42?

A. Besides the flat ware automatic, the girls came in on their—oh, there was 12 or 15 girls came in on that.

The Master: That would be up near 60 that would come in at once as a unit, is that the idea?

A. Between 50 and 60.

The Master: How long would you estimate it would take that group to pass the time clock, if the first one punched at 14 minutes to?

A. I don't know, three or four minutes, maybe.

The Master: Three or four minutes?

A. Yes.

The Master: Then if the first person started at 14 minutes to, the last one passed at 11 or 10 minutes to?

A. It could be. Sometimes certain parts of the cups would come in at the same time we did. There was no certain rule as to what time the different departments started. That is, whether they all started together or started separately. Flat ware and some of the cups came in at 14 minutes to six, and I think some of the cup girls came in at 6:01, the cast ware came in at 6:31, I think; we all passed the time clocks, divided up in the departments.

The Master: Did you start production work just as soon as your crew was all assembled and the preliminary work was done?

A. That is right.

The Master: Or did you wait for other crews?

A. No, our job was individual of the others, providing we had the clay and stuff like that to go with, and nothing the matter with the job.

The Master: Normally your entire crew wouldn't get past the time clock at exactly 14 minutes to?

A. They couldn't punch in at exactly 14 minutes to.

The Master: They would be in by 10 minutes to, according to your testimony.

A. Yes.

The Master: And then it would take about four minutes to get over to the particular place you were working, if you were working at the nearest place to the clock, and to do these preliminary jobs?

A. Three or four minutes.

The Master: So it would be about six or seven minutes to by the time you would be ready to go to work on the production job?

A. Yes.

The Master: I see.

Q. (By Mr. Nunneley): That is the best you could figure, would be six or seven minutes to go to work, isn't it?

A. That would be a pretty close guess.

Q. I say, that is the best you could figure, that is right, isn't it?

A. Well, it would depend a whole lot on the individuals and on their jobs.

Q. We are talking about you, the Master has asked you if it took six or seven minutes to get there, is that right?

A. Six or seven minutes to get there; he didn't say that.

Q. To get there and to get ready to go to work?

The Master: I was figuring the other way in figuring the amount of time before six that he would normally be ready to start production work.

Q. (By Mr. Nunneley) All right, and the best you could get in ahead of time would be six or seven minutes, is that it?

Mr. Goerlich: What are you talking about?

Mr. Nunneley: Just what the Master was talking about.

The Master: You mean the earliest he could hope to start would be six or seven minutes to?

Mr. Nunneley: That is right.

The Master: When you say "that is the best you could do," that might mean that is the best estimate he could make?

A. He allowed me four minutes to get down here and get to work, and if I punched in at 14 minutes to I would be starting at 10 to six.

Q. (By Mr. Nunneley) Providing the rest of the people were there?

A. Yes.

Q. The rest of your crew were there, and provided the clay was there?

A. That is right.

Q. And what else had to be there?

A. Well, there was nothing else that I can remember now.

Q. What was the answer?

A. I say, there is nothing else that I can remember now that had to be there.

Q. There were people who started to work earlier than you did, whose job it was to get the clay there?

A. That is right.

Q. So as to have it there by starting time; that is right, isn't it?

A. That is right.

Q. Now, besides walking down there and doing the things that you have mentioned, what did you have to do to get yourself ready to go to work? Or what did you do?

A. Took off my shirt and put on an apron.

Mr. Goerlich: You mean after or before he punched the time clock?

Mr. Nunneley: After he punched the time clock.

A. Took off my shirt and put on an apron.

Q. (By Mr. Nunneley) Generally worked stripped down to the waist?

A. That is right. I generally had my shirt off by the time I got there.

Q. Anyway, to get ready for work, you took your shirt off, worked stripped to the waist?

A. Yes, underwear shirt on underneath, apron.

Q. And you put on an apron?

A. That is right.

Q. So you did those things along the way somewhere?

A. No, I didn't say that. I said I took off my shirt along the way.

Q. Where was the apron kept?

A. Right on the job.

Q. Did you know every day where you were going to work the next day?

A. Unless we were working extra, we did.

Q. So you would go down there, take your shirt off somewhere along the way, hang it up somewhere, I suppose, put your apron on; is that right?

A. I would have my shirt unbuttoned most of the time by the time I got to the job, and it is no matter to slide out of your shirt and slip your apron over your neck.

• • •

Q. (By Mr. Nunneley) Now, was there any object in your going to work ahead of time?

A. I don't know as I went to work ahead of time.

Q. You don't know if you went to work ahead of time?

A. Supposed to punch in at 14 minutes to. I suppose when I got in there, I supposed I had to go to work as soon as I got in there.

Q. You suppose so?

A. Well, I don't think they would like it if they caught me standing around, not producing.

Q. Of course, they were never paying you for not working?

A. No, I never got paid for nothing I didn't do there.

Q. Of course, if you did work a minute or two, you would prdouce some ware and get paid for it, wouldn't you?

A. As far as I know, yes.

Q. So it was to your interest to be there and be on the job and ready to go, as well as the company's, wasn't it?

A. I suppose it made some difference in our rates.

• • •

Q. Do you recall of a cut in your rate during that ten-year period?

A. Well, I can recall one for small ware, tea ware.

Q. It was cut, was it?

A. 10 per cent.

Q. 10 per cent cut?

A. Yes.

Q. And when was that?

A. Well, I don't know; two or three years ago, four or five, I couldn't tell you the exact date.

Q. As a matter of fact, during the last three years you have had several raises, haven't you?

A. That is what they told us it was, if we could figure them up.

Q. From time to time you have been earning more money for the same amount of work you did, haven't you?

A. That is right. 2 cents a hundred dozen, or something.

• • •

Q. How much time did you say it took you to take off this shirt we were discussing, and put on your apron?

A. Oh, I don't know, 15, 30 seconds maybe. I didn't ever time myself taking it off and putting the apron on.

Q. As a matter of fact, you never timed yourself going back to work, either, did you?

A. Oh, yes. I generally had a clock on the job.

Q. You generally had a clock on the job?

A. That is right.

Q. Who had the clock, you?

A. Either me or the batter-out or whoever I happened to be working with. Maybe the finisher had it.

Q. So you timed yourself going from the time clock back to the place where you were working, did you?

A. No, not from the time clock back to the place where

I was working. From the time I started to work, lots of times look up at the clock, see what time I was working, five, six minutes to, sometimes after six o'clock.

Q. Sometimes after six o'clock?

A. Yes. • • •

Q. (By Mr. Nunneley) So sometimes you didn't get started until after six?

A. That is right.

Q. And sometimes you say you got started a little before six?

A. Sure.

Q. And, of course, if you got started after six, you didn't give anybody any credit for that, did you?

A. No, it generally wasn't my fault.

Q. It generally wasn't your fault?

The Master: How did it happen sometimes you wouldn't start production work until after six? What would cause that?

A. Maybe we would have a tool to set, that we was having trouble setting it. Maybe we would have to set it three or four times before we would get the right set to it. And if one of them happened to be late, or something, maybe didn't punch in for three or four minutes before six, we had to wait for them.

The Master: You couldn't start at all until the entire crew was there?

A. No. We was supposed to wait—we had to wait until the entire crew was there.

The Master: If somebody was sick that morning—

A. (Interrupting): Either sick or maybe didn't get up with the clock.

The Master: Would the foreman assign other workers to your crew?

A. Sometimes if he had another extra he would put a girl, as soon as he came by the job, he would put a girl on there, and if the other one didn't show up there she would stay there all day, and if the regular finisher showed up he would put this other girl some other place.

Q. (By Mr. Nunneley) So that if somebody in the

crew didn't happen to check in until three or four minutes to, then you couldn't start, could you?

A. That is right, unless he put somebody else on the job from a different place for our place until they got there.

Q. This shutdown between shifts that you talked about a few minutes ago, that would take—that was how long a period?

A. Well, some jobs—one time there we was ordered to keep the job running until the other crew was ready to take over so we got production.

Q. So, there was a time that you kept running until the other crew was ready to take over?

A. That is right. They changed their orders lots of times.

Q. All right, we are getting to that. At that time what happened? If you were working on the morning shift you just stopped and the other fellow just stepped right in, is that right?

A. Well, you would grab a handful of clay or something and take it out of the jigger box, and maybe wipe your sponge across the tool and take a little bit of the dirt off of it; be all ready.

Q. Step aside and the other man would step in?

A. And then you had to wipe the bench off, and sweep the floor while they were working.

Q. While the other man was working?

A. Yes.

The Master: Was it necessary for the new crew coming in to do any of this preliminary work, or would they start right in on the job as soon as they got there?

A. Well, I don't know. That more or less depended, I guess, on some of the jobs and some of the men. Some of the fellows maybe might not clean up as good as the guy that come on the job would like, and he might clean up a little bit better.

* * *

Q. That is right, you stepped away from the machine, and if you were on the morning shift and the other fel-

low stepped up to it, and you kept it going right along, didn't you?

A. Sometimes they would keep her going without pulling the rope on the mangle to stop it.

Q. In other words, they wouldn't stop even for a minute?

A. Sometimes.

Q. Sometimes, that is right, and you were on both ends of that arrangement?

A. Oh, yes.

Q. One week you might be on the morning shift and you would take over?

A. That is right.

Q. And the next week you would be on the afternoon shift?

A. That is right.

Q. And you would take over where the morning fellow left off, is that right?

A. That is right.

Q. At that time there wouldn't be any lost time between the two shifts, would there?

A. Well, not too much, I guess.

Q. Well, as a matter of fact you fellows would both be there at the same time, one coming and the other going, isn't that right?

A. Yes, a double job.

Q. And you would be producing ware until he got there and ready to grab it; that is right, isn't it?

A. That is right, and he may not like my set on the tool and he would have to knock the edge down or change it altogether. * * *

The Master: Witness, you said you had a clock for your particular crew?

A. Most of the time, not every day; either I or the batter-out or my finisher had a watch.

The Master: Was that a company policy with all crews or did you generally bring your own clock?

A. No, it was our own watch.

The Master: Watch or clock?

A. Watch.

The Master: You are speaking of a wrist watch or pocket watch?

A. Wrist watch or pocket watch; I wore a wrist watch in there for about three years, I guess.

The Master: Did you keep any records from the time you started production work from day to day?

A. No, not actual minutes; I never did.

The Master: Did this question of working overtime, that the company wasn't paying you for, ever occur to you while you were working on the job there?

A. They tried to keep us down under the time limit, but they would tell us to save the time to keep the rates up, less time and higher rates, if that is what you mean.

• • •

The Master: Well, now, while you were working on the job and until this suit was started, did you ever claim, or did it ever occur to you that you were working, actually working more time than the company allowed you?

A. No, it didn't.

The Master: So that you didn't try to keep any record of your own of the actual amount of time you claim you worked?

A. No, the only record I ever looked at was what the time clock showed; we used to watch that quite close to see that we didn't run over forty hours, forty-two or forty-four.

The Master: And you never complained to your foreman or anybody else that actually you were working more time than what the company was crediting you with?

• • •

A. Not that I know of, or remember.

Q. (By Mr. Nunneley) Now, witness, you said something this morning, you were asked about the girl keeping a record of the amount of work that you did. Do you remember that?

A. Yes.

Q. Did you or any one of your group ever get back a paper showing the amount of work that you were credited with?

A. Not for individual days, no.

Q. Well, just how was that kept track of?

A. Well, as each truck was sent—I think I explained that the other day; as each truck was sent, the jigger man's number and name and the batter-out's number and name and the finisher's number and name was marked on a card, which they call a ticket, and there was an original and a duplicate.

Q. Yes?

A. The original went in the box that they had along the bisque line there, and it was turned in the office at the end of the day and the duplicates was put in in the box, and we picked them up on the way to or from work.

Q. So that on this card, which was in duplicate, there was a record of the amount of work which your group had done, isn't that right?

A. Well, not "had done." There was a record showing how much ware we would get paid for.

Q. Well, who made the record?

A. The finisher made the record.

Q. The finisher made the record. All right. So that there was a record of how much work you were going to get paid for, anyway, that day; that was put on the card, wasn't it?

A. That was the record that went into the office.

Q. That was a duplicate card, isn't that right?

A. That is right.

Q. And then sometime during the day, that card was checked by somebody, wasn't it?

A. I think they checked the cards up some time in the evening or the late afternoon, 2:00 or 2:30, somewhere along there.

Q. Didn't the foreman come along and check the tally?

A. He checked the tally. I don't know if he checked

the tally; he just looked them over to see if anybody's names and number was on there. He didn't check them back over.

Q. He just took a general look at them?

A. Yes.

Q. Did he mark them?

A. I don't know. I never seen him do it. I don't know what he did to them.

Q. Didn't he put the O. K. on them?

A. They were stamped O. K. before they went on the line, — the ticket was.

Q. The ticket was stamped O. K.?

A. For inspection and everything.

Q. Then that ticket came back. That was put in a box for you people, for your group, wasn't it?

A. The duplicate.

Q. The duplicate?

A. That wasn't stamped, though.

Q. That wasn't stamped. So that your group, at least among the three of you, if you wanted to, could have that ticket?

A. That is right.

Q. That was what it was for?

A. That is right.

Q. So that you could have a record of what you were supposed to get paid for; that is right, isn't it?

A. For the two weeks' period, yes.

Q. For the two weeks' period. Was there just one ticket for the whole two weeks?

A. No, each truck had a ticket.

Q. Each truck had a ticket. That is what I am getting at. So, you knew just how many trucks you turned out every day, didn't you?

A. Sure. You can see it when you move the truck. If somebody else moved them or we moved them ourselves.

Q. On top of that, you had a ticket that showed how many you were credited with?

A. It showed the date on the ticket.

Q. What?

A. It showed the date on the ticket.

Q. It showed the date on the ticket?

A. When the ticket was made out.

Q. So, there wasn't any concealment or mystery about how much work you were going to get paid for, was there?

A. No. We could figure it out.

Q. You could figure it up yourself?

A. I knew how much I got a hundred thousand, sure.

Q. And you could figure it up at any time yourself?

A. Figure approximately, yes. • • •

The Master: How did you know what time to quit?

A. They told us at 2:30. We were supposed to stop the job.

The Master: Supposed to stop the job at 2:30, they told you that?

A. Yes.

The Master: How did you know when 2:30 came, then?

A. We generally had a clock in front of us.

The Master: Supposing you did not have a clock or watch?

A. You would see the other fellow's.

The Master: Just saw everybody quitting at 2:30?

A. Yes.

The Master: Was there any big clock in the department you could look at?

A. No, not a company clock. Some of the cast ware girls who worked in the other end had a clock, or something, on their bench.

The Master: Was there any whistles blowing at 2:30?

A. No.

The Master: When did the whistle blow during the day?

A. I think they blowed one at 5 minutes to 7, and one at 7, and 12 o'clock, and 1 o'clock, and 4, but that didn't mean anything to our department because we never worked on them hours. • • •

Q. In other words, you couldn't possibly stop your work and wash up, whatever washing up you did, put your shirt on and get over to the time clock in a minute, could you?

A. No, I don't think I could.

Q. And you couldn't possibly do it in three minutes, could you?

A. Oh, well, I think that is possible.

Q. You think you could walk 500 feet, and do all that, in three minutes?

A. Well, you generally put your shirt on on the way out. Lots of times I would be almost down to the clock before I had my shirt tail in.

Q. You didn't waste any time after it got to be your quitting time to get out of there, is that right?

A. You couldn't.

Q. You couldn't. So, if you checked out at 10:31, for instance, that means that you stopped working time before 10:30, doesn't it?

A. That is possible; maybe run out of clay off the job.

Q. Yes, I know, but it means you stopped actual production work and left your place you were working some time before 10:30?

A. That is right; let me explain it.

Q. I asked you if you left. All right, now you can explain it if you want to.

A. You see, the last round the clay carrier made, I think he made a round every 45 minutes and you had to order enough clay, or supposed to, that you figured would do until 10:30; he is talking about the noon hour, and if you didn't figure it down pretty close and you worked steady some time you might run out at 25 minutes after 10, something like that; maybe not work right up to 10:30, not have enough clay. By the time you went out to the slip house and got it.

Q. Well, you were the judge of how much clay to order, weren't you?

A. Tried to be, that was our job.

Q. So that there would be a case, if you went out at 10:31, you left some time before 10:30, didn't you?

A. I imagine so.

Q. And you were paid at least to 10:30, or it was computed in your time?

A. That is the way the clock cards show, yes.

Q. And if you went out at 10:32, how about that?

A. I don't know. I may have quit a couple of minutes or a minute before 10:30. • • •

Q. And, I am just seeing whether you quit ahead of time. Did you on occasion quit ahead of time?

A. Sure, I will admit that. I tried to tell you why.

Q. As a matter of fact, on practically every noon, is that right?

A. That is right. • • •

Q. In your computation of times, you aren't going to give any credit for the time you quit ahead of the 10:30, are you? • • •

The Master: If their claim is correct, there isn't anything there, because they claim the work is from the time the time clock is punched. • •

Q. (By Mr. Nunneley): You said the other day, I believe, that you were required on all occasions or numerous occasions to go out, punch the time clock and then go back and go to work; did you say that the other day?

A. I didn't say all the time, no. I said some of the times we was.

Q. Well, how many occasions do you think you had to do that?

A. I wouldn't remember how many. Quite a few of them.

Q. Quite a few of them?

A. Yes.

Q. How did it come that you were supposed to do that?

A. So there wouldn't be too much time showed on our time clock.

Q. So there wouldn't be too much time shown on your clock?

A. Card.

Q. On the card; according to the company's way of computing, is that right?

A. That is right.

Q. And your clock cards, you saw them every day, of course, the same as the rest of the folks did?

A. That is right. I would see them to punch in and out.

Q. And you saw that the hours which you were credited with the preceding day were all there?

A. They were supposed to be every day. I didn't always look at them.

Q. You knew they were there?

A. I knew they were supposed to be.

Q. And you could look at them if you wanted to?

A. That is right.

Q. And you knew how they were computed, didn't you?

A. Yes, I understand according to the clock cards, they was computed on the quarter hour.

Q. From the quarter hour. You knew the method of computation, and for how long a period did you know that?

A. Did I know what? How they was computed?

Q. Yes.

A. It didn't take me very long to find out after I worked there for a while. They done it all the time I know of.

Q. Well, they done it all the time you worked there, would you say?

A. That is right.

Q. Or did they have time clocks all the time you worked there?

A. They had—wait a minute, now—yes, they had time clocks all the time.

Q. And the same method of computation was followed throughout the whole period you worked there?

A. Yes. I think so, only when I first started there, we didn't always punch out at noon and punch back in.

Q. And the same method was followed during the last four years?

A. That is right.

Q. And since November of 1938, is that right?

A. As far as punching the clock card?

Q. As far as computing the time?

A. Yes, that is right.

Q. And since that time there have been consistently every year a reduction in the number of hours you were allowed, is that right?

A. Well, when the labor laws went in effect, I guess there was.

Q. Was there such a reduction?

A. As far as I know there was, yes.

Q. As far as you know. As a matter of fact, they reduced it, they made it 44 hours at one time, didn't they?

A. Yes.

Q. And then they made it 42 hours?

A. That is right.

Q. And then they made it 40 hours?

A. That is right.

Q. And using the same method of computation, that you folks had followed during all the ten years there, isn't that right?

A. That is right.

Q. And during that period did you get up to the—even up to the legal rate at any time; legal number of hours?

A. Well, I imagine there was times that I come within a half hour, or hour, or quarter of an hour, something like that.

Q. Isn't it a fact, according to the company's method of figuring at least, according to the computation, you were short during all of the last two and a half years, two years, anyway?

A. Yes, but there may have been exceptions in there that one week I come pretty close.

Q. There might be a week when you would be pretty close?

A. That is possible.

Q. But, as a general rule, you were short on your hours of the amount you were permitted to work, isn't that right?

A. That is right to a certain extent, yes.

Q. And on occasions they gave you other work to make up the hours?

A. If we had a day off, or something, yes.

Q. Was that done before you asked for it, or because they wanted you to?

A. Well, I don't know. Sometimes they would come and tell you to do it, and sometimes you ask yourself.

• • •

Q. (By Mr. Nunneley): So that as far as going back to do any work on either of those two weeks to save getting over the hours, it wouldn't be necessary, would it?

• • •

A. No, not unless it was to keep our rate up and our time down, that is the only thing I could tell you, according to that card.

Q. Because any of the extra work you have mentioned could easily have been done within the time, couldn't it, that you had to spare there?

A. That is right, but it would have brought our hourly rate down.

Q. Of course, the hourly rate, as far as your money is concerned, didn't make any difference anyway, as far as the amount of money you received is concerned, the hourly rate made no difference at all, did it? • • •

A. No, it didn't make any difference to me.

Q. (By Mr. Nunneley): That is what we wanted to know.

A. It wouldn't have made any difference in my check.

• • •

Q. (By Mr. Nunneley): According to your method of computation, how many hours did you work the first week shown on that card?

A. The first week?

Q. Yes. • • •

A. I would have to have a pencil and paper to figure up the minutes. • • •

The Master: I won't permit you to have the witness make this computation that you desire.

Q. (By Mr. Nunneley): Well, witness, will you tell us any week that you did any work that is not shown on the time clock cards?

A. No certain week, no, I couldn't tell you.

Q. You can't give us any definite week?

A. No.

Q. During the last three years that you did any work?

A. Not—I couldn't tell you the day or the week or anything.

Q. Can you tell us any month?

A. No, I couldn't tell you no month either.

Q. So that as far as you are concerned you haven't any idea as to when this claimed work was done, is that right?

A. Not that I can recall, no, a certain day or date, or anything else, I couldn't tell you.

Q. Well, on how many occasions do you claim it was done?

A. Well, for a while I imagine it was done almost all the time.

Q. Well, when was that period of time?

A. Well, before they stopped doing that practice.

Q. Well, when was it?

A. Well, I said the other day about a year and a half ago was the last I can remember of it.

Q. In other words, for the last year and a half, then, you haven't done any, is that right?

A. I don't think I have, no, not that I recall.

Q. You don't think so. When was the last time you remember having done any work after punching out?

A. I said approximately a year and a half ago was the last time I remember except going to meetings after we punched out or before we punched in. That would be about two hours to two and a half hours in a two week period we spent up there on our own time.

Q. Now, you claim you did some work before the punching of the time clock in the morning or at noon at any time?

A. Well, I wouldn't say on the morning shift, I did in the morning shift, no, before I punched in in the morning.

Q. Was there any at noon that you did before you punched in?

A. Well, I don't know about noon. I can't recall any time that I did at noon. It was mostly when we would be done at 2:30 and maybe come in ahead if you worked in the afternoon ahead of time and do something like that; load up molds, or change, or something like that.

Q. Can you give us any day you came in ahead of time?

A. No, I couldn't tell you any date or day, either.

Q. You can't give us any idea?

A. I don't think I have done it in the last year and a half, but I know I did it before that lots of times.

Q. Do you claim that every day you worked before the quarter hour starting time between the time you punched in, that you did some work every day?

A. You—no, I don't claim every day. I did every day as far as starting production, sure.

Q. You did every day as far as starting production?

A. Had to get the job ready to operate.

Mr. Goerlich: You mean between the time you punch the clock, and—

A. (Interrupting): Between the time I punched the clock and the time I started jiggering.

Q. And the time you started jiggering. Sometimes you started to jigger after the quarter hour?

A. That is possible.

Q. Have you ever computed what that time amounted to?

A. Which time do you mean?

Q. We have just been talking about.

The Master: I don't quite understand your question, Mr. Nunneley. Have you ever computed what that time amounted to?

Mr. Nunneley: Yes. We have asked him has he done

some work before he started to jigger and before the quarter hour.

The Master: You mean has he ever computed this work he says he did before the quarter hour began?

Mr. Nunneley: That is right. How much time that was.

A. I told you this morning it varied with what you had to do before you would get your job operating.

Q. Well—

A. (Interrupting): Some day it may take a couple of minutes; some day it may take a half hour. It all depends on what you had to do. If you couldn't get a tool set, or something like that.

Q. If it took a half hour, then, you got by the starting time, didn't you?

A. Yes. Through no fault of my own.

Q. Well, is it true, then, that this so-called extra work that you did between that time was a matter of two or three minutes a day, is that what you mean?

A. Sometimes. If you worked on extra you didn't get the work from anywheres from ten minutes to an hour; standing around there waiting for them to put you on a job.

(At this point Mr. Lamb entered the court room.)

Q. One of the things that you said you did was pick up boards as you went in, wasn't it?

A. That is right.

Q. And where were the boards?

A. Well, sometimes they would be down at the lower end of the clay shop, the east end of the clay shop, and sometimes they would be on the bisque belt if we worked at the other end. We would pick them up along the bisque belt. Sometimes you would have to go almost over the whole department before we would find any so that you could start to work.

Q. Generally they were right on your way in, weren't they?

A. Sometimes.

Q. That was the place they were supposed to be kept?

A. If somebody else didn't beat you to them.

Q. That was the place they were supposed to be kept, was right on your way in?

A. Well, there would be some on the bisque belt, or setting in trucks on the way in, sometimes you would have to go beyond and come back.

Q. You can answer my question.

A. I am answering the best I can.

Q. Isn't it true they were generally kept and supposed to be kept right on the way in to your department?

A. Not necessarily.

Q. So that you didn't have to go out of your way to get them at all?

A. Sometimes.

Q. Well, isn't that where they generally were?

A. Sometimes.

Q. Now, you know what I mean.

A. Sure, I know what you mean.

Q. Was it an exception that they weren't there?

A. No, sometimes you could find them there and sometimes they weren't there.

The Master: Where were they the majority of times?

A. Well, they would be all over the shop, they would be in trucks, some be along the bisque belt.

The Master: On most of these occasions, did you have to go out of your way to get them or on most of the occasions were they on your way?

A. Well, sometimes you could pick them up on the way in, sometimes you couldn't. I don't know what the percentage would run. Sometimes you would have them left on your job from the night before.

The Master: You don't have any idea what portion of the time they were right there and what portion of the time you had to go out of your way to get them?

A. Well, if you had to go out of your way, maybe within from five to fifty feet of the job, maybe. If you couldn't pick them up on the way in.

Q. (By Mr. Nunneley): Those boards, somebody was supposed to put one around your place, weren't they?

A. Yes, the trucker was supposed to.

Q. The trucker was supposed to put them there?

A. He was supposed to change the trucks, too.

Q. And he had a job to have those things there before you started in the morning, didn't he?

A. No, I don't think the trucker was there in the morning when we came in.

Q. You don't think he was there?

A. I don't think he came in until 6:30, quarter to 7.

Q. He didn't come in until later. Sometimes there was some left from the night before?

A. That is possible. * * *

The Master: Witness, this extra work that you say you did outside, or sometimes outside of the time punched on the time clock, was that restricted to cleaning molds?

A. Well, it wasn't necessarily cleaning molds. It was changing them from—putting them from one type of ware into another.

The Master: Changing molds and cleaning molds?

A. Cleaning molds and, oh, a few times maybe oiling.

The Master: Was changing molds, cleaning molds, and sometimes oiling molds, was that done on any day during the week, or could it be at any time?

A. They had them all changed to come through. They changed their period, I think. I don't know for sure. It was Wednesday, Thursday and Friday, I think the mold changes came through. That is, one day a week. Of course, it wouldn't hold true every week. A certain period they would come out, but maybe they would run along for six months like that, and maybe change over to Thursday when the mold change came through. Sometimes we would change the same day and sometimes the next day, and maybe a couple of days before we would change the mold like the mold change specified. The mold change come from the main office, front office; what types of ware to run on the job.

The Master: There wasn't any regular routine schedule in which you did that, any day of the week, in other words?

A. No.

The Master: Or any specific amount of time that it would take you when you did that work?

A. No. There couldn't be any certain time because you didn't know when it was going to happen.

The Master: It might be a big job one time, and it might be a small job the next time?

A. That is right. Sometimes you would get them all loaded up and find out you did not have enough molds, and then you were just out of luck. You had to wait for them to decide what they were going to do, and sometimes not change them at all.

The Master: I believe you said you didn't have any records of what you worked at?

A. No. * * *

Q. (By Mr. Nunneley): Then as I get it, witness, there isn't any way that you can tell how much time you spent for any of this so-called work that was done between, or, when the time clock card wouldn't show it, is that right?

A. That is right, I couldn't tell, no records of it myself.

Q. Nor can you in any way tell any amount of work that you did between the times when you punched the clock and the succeeding quarter hour, we will say?

A. Not every day, no, any individual day I couldn't say because there were different things come up that I wouldn't remember I did. * * *

Q. Did you ever have to stand around and wait after you got there for somebody else to come?

A. Yes, there are different times that one of the crew would be a few minutes late; I would have to stand and wait; a fellow happened to be on extra, we waited anywhere from ten minutes to an hour trying to get a job, until they decided who they wanted to send home. If you had a day off you had to stay there until 7 or 8 o'clock until they released you to go out.

Q. (By Mr. Nunneley): Witness, can you tell us how many weeks you claim you worked overtime?

A. No, I don't think I could; I never stopped to figure it up.

Q. Never stopped to figure it up. Did you ever stop to figure up how many hours you claimed overtime?

A. For a period of four years, no, because I wouldn't know.

Q. For the last year?

A. No, I wouldn't know.

Q. I show you Exhibit No. 31; how many hours do you claim you worked the first day shown on the exhibit?

The Master: If you want a pencil and paper, here it is (indicating).

A. 3 hours and 29 minutes, I think. I think it is 3 hours and 29 minutes. • • •

Q. (By Mr. Nunneley): On the first day on there, you went in at what time?

A. At 2:36.

Q. 2:36. And do you know whether on that day you were working the shift with another fellow?

A. No, I couldn't tell you that.

Q. You couldn't tell us that?

A. No.

Q. According to the method which was customarily followed and which you knew about on that day, of course, your time, the company would compute the hours as being what? • • •

A. 2:45.

Q. (By Mr. Nunneley): 2:45. So that there was a difference of 9 minutes there?

A. That is right.

Q. And during that period you went back and did all the things you have talked about this morning, got ready to go to work?

A. I wouldn't say all of them. I did some of them.

Q. Some of them?

A. Yes.

Q. You did some of them but not all of them?

A. Not for that day. I don't know which ones.

Q. And in the afternoon you got out af 6:05, didn't you?

A. 6:05 that evening.

Q. Yes. That was five minutes after the company's time that they gave you credit for, you were out of the place, weren't you?

A. That is right.

Q. Beyond the clock?

A. At the clock at 6:05.

Q. And on the next day on the card, you went in at what time?

A. 2:37, I think. That is what it looks like.

Q. That would be a matter of 8 minutes before the company would say was what they would say under the customary rule was the starting time, is that correct?

A. That is right.

Q. And you went out, the first time out that day, you went out at what time?

A. 7:01 that night.

Q. In other words, you were back to the clock and on your way out within a minute of the time that the company stopped paying you, weren't you?

A. That is right.

Q. So that on that day you must have ceased work some time before the company— . . .

A. I think I did.

Q. (By Mr. Nunneley): And how long ahead of time would you say you ceased work that day?

A. I don't know.

Q. You don't know?

A. 7 o'clock, maybe.

Q. And you went in again at 7:20, is that right, in the evening? You were working the evening shift?

A. 7:20.

Q. And that was ten minutes before the time, is that right, that the company figured you were supposed to start work?

A. I don't know what they figured we was supposed to start work. 7:16, I guess.

Q. 7:16. Anyway, you didn't go in until 7:20, did you?

A. I can't eat my lunch in five or ten minutes. It isn't good for the health.

Q. But you did go in at 7:20, didn't you?
A. 7:20, yes.
Q. And you went out at what time, 11:09?
A. That is right.
Q. That was 9 minutes after they paid you for on that day?
A. That is right.
Q. And the next day on there, on Friday, you went in at 2:35?
A. That is right.
Q. Again 9 minutes before the company would start crediting you with time, wasn't it?
A. 10 minutes.
Q. 10 minutes before. And you got out at 7:03, is that right?
A. That is right.
Q. You stopped a little before 7, probably, that day, too, didn't you?
A. I wouldn't know.
Q. You wouldn't know. And on that same day you went back in again at 7:23?
A. That is right.
Q. They allowed you 7 minutes to get back and to get going again, didn't they?
A. I guess so.
Q. And you went out again at 11:09; that was 9 minutes after their time?
A. That is right.
Q. Then you switched to working in the morning, on that card?
A. That is right.
Q. And the first morning you went in at what time?
A. 5:49.
Q. And out at what time?
A. 10:31.
Q. So that again you must have stopped working some time before the 10:30 period, isn't that true?
A. Production?

Q. Yes.

A. That is possible.

Q. Or any other kind of work. You couldn't get to the clock in that length of a minute, could you, from where you worked?

A. It all depends where I was working.

Q. All right. You were working in the clay shop generally, weren't you?

A. That is right.

Q. And you want to tell us you could get to the clock in that time. Do you have to take your apron off when you get through work?

A. Yes.

Q. And you go out and put your shirt on?

A. On the way out.

Q. Wash yourself off as you have described?

A. Just my hands.

Q. What?

A. Just my hands.

Q. Washed your hands. And, you got out there within a minute and you want to tell us you didn't stop working before that time?

Mr. Goerlich: I object. • • •

The Master: They do claim work should be computed from the time the time clock is punched and since this activity went on afterwards it must be within what they claim to be work under the pleadings. • • •

And by "working" means you didn't stop production work before that time, did you?

A. Before 10:30, you mean?

Mr. Nunneley: Yes.

A. I don't know, it could be.

Q. (By Mr. Nunneley) It could be that you stopped work before?

A. Sure.

Mr. Lamb: Production work.

Q. (By Mr. Nunneley). Any kind of work?

A. You said "production work" before.

The Master: Don't shift to "any kind of work," because—

Mr. Goerlich: He is trying to mix the witness up.

The Master: You will have to indicate you are asking a new question now, if you want to ask him what time he stopped any kind of work, you can do that.

Q. (By Mr. Nunneley) All right, what time, can you give us your best judgment as to what time you stopped production work on that first Monday shown on the card, Exhibit 31?

A. Stopped production work?

Q. Yes.

A. Oh, I don't know, 29 minutes to, or after, or 10:30, I don't know; I don't recall the particular day. At noon there wasn't much—just pull the switch and take a couple of swipes with your sponge and run, if you wanted to eat your lunch without swallowing it whole, and get a chance to smoke a cigaret.

Q. And that day you went back in at 10:53?

A. That is right.

Q. That allowed you seven minutes to get down to the place where you were supposed to start production work, didn't it?

A. Well, I don't know if they figure it that way or not; seven minutes to get down there; we were supposed to get in there and go to work as fast as we could.

Q. Oh, I see. Provided all the rest of your group were there, that is right too, isn't it?

A. That is right.

Q. And you don't know whether they were all there at that time or not?

A. Not that particular day, no.

Q. Nor any of these particular days, you don't know whether the whole group was there or not, do you?

A. No, I couldn't say for sure.

Q. So as a matter of fact you couldn't actually start production work until the last one of your particular group got there on any day?

A. At noon?

Q. Any time.
A. It could be in the morning.
Q. How could it be in the morning?
A. Well, he could put an extra man or extra girl, whoever it happened to be.
Q. All right until either your crew got there or they dug you up an extra worker?
A. That is right.
The Master: I think that has been gone over.
Q. (By Mr. Nunneley) And you went back in at 10:53, that was 7 minutes before the time that they would be crediting you, according to the custom or system, isn't that right?
A. Yes, that is the way they figured it.
Q. And out at 2:40 on that first Monday on the card, Exhibit 31, five minutes before the time—pardon me, 10 minutes after the time, that is right, isn't it?
A. Ten minutes after what time?
Q. The time to which you would be able to quit.
A. We had to be punched out by quarter to 3:00, supposed to be.
Q. You had to punch out. In other words, there were requirements that you had to be out as well as requirements that you had to be in, is that right?
A. That is right, so we wouldn't accumulate too many hours.
Q. So you wouldn't get too many hours in, and you understood that during all of the last four years, did you?
A. Well, they told us every meeting.
Q. They told you, and I asked you, you understood it, did you?
A. Sure.
Q. And cooperated in doing it with the company?
A. As much as possible.
* * *
Q. (By Mr. Nunneley) Now, witness, I will take this one card and ask you to figure out the first week on the card how many hours you claim you worked, according to your system?

The Master: I will let him do it with this one card; we have argued this question out, and I will let him do it with this one card, but not permit him to do it with any other cards. Will you figure out how many hours you claim you worked?

A. According to my figures, 37 hours and four minutes for the one week.

Q. (By Mr. Nunneley): For the one week?

A. That is right. I had a half a day off that week.

Q. You had a half a day off that week. All right. Figure the next week on the clock. You don't claim anything for that week, then, do you?

A. Oh, I don't know. • • •

Q. (By Mr. Nunneley): Regarding this particular week that you figured up from Exhibit 31, what if any time did you spend working that is not shown on the clock card here, according to your method of computation?

A. That particular week I don't know, only for the meetings; I know I spent some time up at meetings that we figure is work, pertaining to our work, anyhow. • • •

Q. (By Mr. Nunneley): Witness, outside of meetings, what time did you spend doing work that is not shown on this card, this particular week?

A. I couldn't tell you for that particular week. It is too long ago.

Q. Couldn't tell us how much time you spent?

A. No.

Q. There wouldn't be any record of it, would there, that you know of?

A. Not that I know of, only if there happened to be a mold change that week, it might show the mold change.

Q. And you don't know?

A. No, I don't know.

Q. All right. Now, will you figure up the second week on the card; did you have any half days off the second week? You might look at it first and see (handing card to witness)? • • •

A. I worked full time.

Mr. Lamb: What do you mean, not going by the card?

* * *

The Master: I think this has been gone into, but I will ask the witness, did you state that this extra work was discontinued about a year and a half ago?

A. As far as punching out and coming back in and doing it, yes, I think so. That was my approximate figure. That is the last time I would say I had done that.

The Master: And before that time you say you did extra work, consisting of cleaning, changing, and sometimes oiling molds, which sometimes was done outside of the hours that you were working as indicated on the cards?

A. That is right.

The Master: But you don't have any records of that work, do you?

A. No, I haven't.

The Master: And you can't identify any particular week in which you did that work?

A. No, I couldn't; not unless the mold change would show up in the job. And then I couldn't say for sure that I done it that particular time.

The Master: And you couldn't say on that particular time as to whether you did it within the hours shown on the time clock cards, or outside of the hours shown on the time clock cards?

A. It was the general practice for them to have you do that.

The Master: It was the general practice—

A. (Interrupting): To have you do that, yes.

The Master: To have you do what?

A. To finish changing molds, or oiling molds, or come in and load up your molds before you punched your time clock in, or after you punched out. Maybe not the whole thing, but some of it.

The Master: You say it was the general practice to do that outside of the time shown on the time clock cards?

A. Yes, sir.

The Master: I thought I asked you whether the majority of the time you did it outside of the time shown on the time clock cards, or whether the majority of he time you did it within the time shown on the time clock cards, and you said you didn't know what percentage it was, or whether it was fifty-fifty.

A. It was the general practice to do that work.

The Master: Was it the general practice to do that outside of the time shown on the time clock cards?

A. Maybe not the whole thing, but sometimes it was.

The Master: I don't understand your testimony. You say that you regularly did this work—either regularly or irregularly did this work, but very frequently did this work of changing and cleaning the molds and sometimes oiling the molds?

A. That is right.

The Master: And sometimes you did it outside of the time shown on the cards?

A. And sometimes inside the time shown on the cards.

The Master: Do you know whether on more occasions it was outside the time shown on the cards or on more occasions it was inside the time shown on the cards?

A. I wouldn't be able to say. As far as oiling molds, I would say most of the times it was done inside the time showed on the card here.

The Master: I see.

A. But changing, why, I couldn't even guess on that. I know it was done a lot and I did it a lot.

The Master: Now, do you have any way of telling in any particular week throughout the entire period that you worked there how much time was spent outside the time shown on the time clock cards, in doing this work of cleaning, changing, and oiling the molds?

A. No record at all of any kind like that. • • •

Q. (By Mr. Nunneley): Can you tell us of any week that you can recall of now that you worked more than the legal number of hours?

Mr. Lamb: Objection.

The Master: I will overrule the objection. • • •

A. No, I couldn't be able to tell.

Q. (By Mr. Nunneley) Can you tell if you examine the cards any week that you worked more than the time?

Mr. Lamb: He would have to compute them, wouldn't he?

A. I don't know if I would be able to or not.

Q. (By Mr. Nunneley) We will show you the Exhibits 31 through 31-LL, and ask you if you can tell any week from examining the cards (handing exhibits to witness)?

Mr. Lamb: Objection. That is going to require a computation on every week.

The Master: I am not going to permit the computation. I have already ruled on that.

Can you tell without making a computation?

Mr. Lamb: No one could.

The Master: I will ask the witness.

A. The only way I know would be to take their figures.

Mr. Lamb: And that would represent the company's computation, but not the actual computation.

The Master: You have already stated, according to the company's computation you have never worked overtime, have you not?

A. Not that I remember, no.

The Master (Interposing): How much could this charity work amount to in any given week? Is there any maximum figure you can place upon it? And that is—I don't mean just the work of changing and cleaning the molds, but the work of changing and cleaning the molds that was done outside the time shown on the time clock cards.

A. No, I wouldn't be able to say.

The Master: Could that amount to as much as four hours a week, or four hours in any one week?

A. No, I don't think I ever spent more than that.

The Master: Could it amount to three hours?

A. I couldn't say; I don't remember.

The Master: The total amount of time spent in changing and cleaning the molds, irrespective of whether it was

within the time shown in the time clock cards or outside that time, could that total time in a given week amount to more than four hours?

A. Yes.

The Master: You might spend more than four hours a week in cleaning and changing the molds?

A. Sometimes cleaning and oiling them might take six hours; it all depends on the job.

The Master: But you don't think you could have spent as much time as four hours a week outside the time shown on the time clock cards doing that work?

A. I don't remember of any certain time.

The Master: Well, whether you specifically remember it or not, do you know whether in any one week you could have spent that much time?

A. I don't think it has ever happened to me; it may have happened to some of the other fellows.

The Master: I am just restricting the question to you.

A. I don't think so; I don't know.

The Master: But as to three hours, you are not so sure?

A. No.

The Master: I will put the question directly to you again. Can you say whether you spend as much as three hours, or rather, can you say you never spent more than three hours' time outside the time clock record in doing this extra work of cleaning and changing molds and oiling them?

A. Well, I don't believe I have.

The Master: You don't believe you spent that much?

A. Not any more than three hours.

The Master: Could that have ever been as much as two hours in a given week?

A. Oh, it could have been that. • • •

Q. (By Mr. Nunneley) What is the earliest you remember going to work at the plant? • • •

A. The year we had that snowstorm I say I was there at 4:30 in the morning that morning.

Q. That was why?

A. Because of deep snow, I wanted to be there on time.

Q. You wanted to be there on time and you didn't know how much trouble you would have?

A. I didn't know how much trouble I would have.

Q. You didn't know how much trouble you would have and you left home early and got there at 4:30 in the morning?

A. That is right.

Q. What is the earliest, outside of the snow storm, time that you remember getting there?

A. Oh, I may have got there quarter after 5:00, twenty after 5:00, 5:30.

Q. You have left home from 12 miles away in time to allow yourself enough time to be sure to get there?

A. That is right, in case I would have a flat tire, or something.

Q. In case you had a flat tire, or something of that sort, and as a general rule you would say you got there what, ten or fifteen minutes before punching-in time?

A. Something like that.

Q. And in the afternoon when you were working on the afternoon shift, the usual time for starting on that shift was what?

A. 2:30.

Q. And what would you say was the earliest you would get there on those occasions? • • •

A. Oh, I have been there lots of times 2 o'clock.

Q. You have been there lots of times at 2 o'clock?

A. That is right. • • •

Q. How late would you say when you would leave the plant after you had completed your shift? If you were on the early shift, or the daytime shift, how late would you say you would stay around there?

A. I don't know. Sometimes I would go straight home, sometimes I would go downtown.

Q. I mean around the plant. I don't care whether you

went home or went downtown. When you left the plant, that is what I am talking about.

A. Well, on Thursdays we left the plant anywhere between 4 and 4:30, after we got out of the meeting. The other days it would vary. 3 o'clock, quarter after, 10 minutes to 3. It all depends if I was in a hurry to get home to do something, I would go right home.

Q. And this matter of changing molds, you did that how often?

A. No set time, because it all depends what job you worked on. Some jobs change every week and some change every eight or nine or ten weeks. It depends a whole lot on the job.

Q. So you can't enlighten us at all as to how many times you have changed molds?

A. No, I couldn't give you no figure on that.

Q. Can you tell us how much time you spent—

A. (Interrupting) How long it took to change a set of molds? Three to six hours.

Q. Three to six hours. And the number of times you changed, you can't tell that, is that right?

A. Can't tell what?

Q. The number of times you changed molds, let us say, in a year.

A. I wouldn't be able to answer that. • • •

Q. (By Mr. Nunneley, continuing) I show you Exhibit 32 being a time card of Walter Selk for the period of December 3, 1940. What time does it appear from that card that Mr. Selk went by the time clock on the first day shown on the card (handing exhibit to witness)? • • •

A. 5:55.

Q. (By Mr. Nunneley, continuing) And, Exhibit 31-RB, your card for the same time, same period, what time did you go to work that day (handing exhibit to witness)?

A. 5:49.

Q. Now, what time did you say your crew were able to start work that day?

Mr, Lamb: Objection. It is immaterial what time the crew starts to work.

The Master: I will overrule the objection.

A. Well, it depended on if him and I was working together that day or not.

Q. (By Mr. Nunneley, continuing) Didn't you testify this morning you and he were working together at that time in December?

A. Not that same day, no.

Q. Not that same day?

A. I may have worked with five different guys all in one week.

Q. So, you say now you don't know whether you were working with him or not?

A. Not that certain day.

Q. I see. All right. Did you tell us this morning that you were working with him in December of 1940?

A. I think that is when I said I started to work with him was in December, as far as I could recall.

Q. Now, I will show you Exhibit 32 and ask you about the second day on there. What time did Mr. Selk go to work (handing exhibit to witness)?

A. 5:53 punched in.

Q. And what time did you go according to Exhibit 31-BB?

A. 5:50.

Q. You weren't able to start doing any producing that day, either, until he got there, were you?

A. Not actual jiggering if him and I was working together I couldn't have. I don't imagine I could.

Q. And what time does the third day on the card show?

A. 5:58 for Wally and 5:49 for me.

Q. So that you couldn't have started working on that day until after the time which the company would give you credit for, could you?

A. If him and I was working together, yes, that is right.

Mr. Nunneley: Mark this, please.

(A document was thereupon marked Exhibit 33 by the reporter.)

Q. (By Mr. Nunneley, continuing) I show you Exhibit 33, being a card of Walter Selk for January 7, 1941. The first day on there, what time did he start, come in? What time did he come in (handing exhibit to witness)?

A. He punched in 2:44.

Q. According to the established practice, which you were familiar with all this time, what time would his compensation start?

A. They figured his time as 2:45.

Q. 2:45. And on that same day what time did you go in?

A. 2:45.

Q. According to the practice what time was yours figured from?

A. From 2:45.

Q. From 2:45. On neither of those days were you at your stations, either one of you, before the hour at which the company would credit you? • • •

A. If we were out there at the clock we couldn't come back to the job at 2:45. • • •

Q. (By Mr. Nunneley) Now, you claim you were charged for some things that were not authorized, is that right? • • •

A. Well, they weren't authorized for me, if I had to sign over whether I was to pay them or not.

Q. During all the time you were a jigger man there, except the last few months anyway, the sponges were charged to you and all other jigger men, that is right, isn't it?

A. That is right.

Q. And that was the established custom and practice in that plant, was it not, during all the time that you were there? • • •

A. The jigger men had to pay for the sponges.

The Master: And that was an established practice of the company to require them to?

A. As far as I know. • • •

Q. (By Mr. Nunneley) And how many sponges were charged to you, if you know, during the period? • • •

A. The period of two weeks or one week?

Q. (By Mr. Nunneley): Well, let's say a week.

A. Well, some jobs use three sponges a week and some of them would use, well, two one week and maybe one the next week, or three in a two week period; it would depend a lot on the job and on the finisher.

Q. Were the people permitted to buy them anywhere else if they wanted to?

Mr. Lamb: Objection.

A. I don't know about that.

Mr. Lamb: Just a second, an objection; that is immaterial; how does he know whether the people, whoever the people might be.

Q. (By Mr. Nunneley): Were your group, were you permitted to buy them anywhere else if you wanted to?

A. I didn't buy them, the finisher bought them. • • •

Q. (By Mr. Nunneley): Do you know whether the finisher was permitted to buy them anywhere else?

A. I don't know. I never asked her.

Q. You never asked her.

The Master: Let's see, now. Did the finisher buy the sponges and they were deducted from your pay?

A. That is right. She used them and I paid for them.

Q. (By Mr. Nunneley): And she used them in a group operation, didn't she?

A. Well, she finished her ware.

Q. I say, she used them in a group operation?

Mr. Lamb: The answer was given that she used them in her work.

Q. (By Mr. Nunneley): It was your ware as well as hers, wasn't that right?

Mr. Lamb: Objection. • • •

The Master: The witness has testified—you have tes

tified you worked as part of a crew, consisting of yourself and another man and the girl that was acting as the finisher?

A. That is right.

The Master: Were these sponges for which deduction was made used by the finisher in your crew?

A. Yes, she would use them on our ware, and sometimes she would go over on another job, she would take her sponge with her.

The Master: Were you ever charged for a sponge that was purchased by a girl who, at the time she got it, was working on another job?

A. I wouldn't have no way of knowing, because our name was put on there by the foreman and handed to the finisher, and we never seen any, or very seldom seen any sponge order. We don't know who it was charged to.

The Master: You weren't asked to sign the order?

A. No, it wasn't signed by anybody—that is, by us. The foreman would sign, I guess, and put our name on it.

Q. (By Mr. Nunneley): Well, let's see. The girl that worked with you, your finisher worked with you in your group, she used the sponge in the operation, didn't she?

A. Yes, she used sponges.

Q. You never worked in a pottery, or in this one at the time when the jigger man hired his own crew, did you?

A. No, that was before my time.

Q. That was before your time. Do you know whether originally that wasn't the situation.

Mr. Lamb: Objection.

Q. (By Mr. Nunneley): That the jigger man hired his own crew, do you know?

The Master: I will overrule the objection.

A. Oh, I have heard that was the case before I came there.

Mr. Lamb: How long have you been there?

A. Ten years.

Q. (By Mr. Nunneley): There was a store there in the plant, wasn't there?

A. During the time I worked there?
Q. Yes.
A. Stock room, yes.
Q. And a man there in charge of it?
A. Yes, sir.
Q. And such articles as they had that you wanted, you could go there and buy, couldn't you?
A. By order, yes. I don't think you could pay outright for them.
Q. No, they took in no cash at the store?
A. As far as I know they didn't.
Q. But you could go there and order whatever you wanted that they had and sign for it, couldn't you?
A. Well, I don't know if you could everything or not.
Q. Did you have to get things at that store?
A. Yes, I have got things at that store.
Q. What did you get there?
A. Oh, a roll of tape now and then, or if I would cut my finger, a finger stole; and pails.
Q. Pails. What else?
A. I guess that is about all I would get.
Q. You would go there and get it and sign for them?
A. That is right.
Q. You would sign a ticket?
A. Yes.
Q. The man in charge was not allowed to take in any cash, and you didn't pay any cash?
A. He never took any from me.
Q. And when the next pay came, whatever you would sign for would be taken off of your pay, wouldn't it?
A. I imagine it would be. We didn't know how much or anything.
Q. You didn't know how much or anything. Did you ever inquire how much? • • •
A. Not that I know. • • •
Q. (By Mr. Nunneley): And, after you bought these articles, it was taken out of your pay? You understood it right along, didn't you?

A. Supposed to be.

Q. Yes. And did you ever question any of the deductions at all?

A. That come from there?

Q. Yes.

A. Maybe not that particular pay, no.

Q. Any pay?

A. Sure, I questioned deductions when I didn't draw as much as I figured I should have coming.

Q. And you would ask for an explanation?

A. That is right, I would want to know what was deducted.

Q. And then they gave you the explanation?

A. In time. • • •

The Master: You asked him about his questioning about pay.

Mr. Nunneley: That is right.

The Master: And we went through that in considerable detail.

Mr. Nunneley: The claim is made here now—

Mr. Goerlich: (Interposing): How he went to his foreman how his foreman would go to somebody else, and how somebody else would send it back to his foreman, and then back to him.

The Master: The question is now limited whether he made complaints or questioned the deductions of this type of pails and finger cots and so forth.

Mr. Nunneley: That is right, things that he bought.

The Master: Did you ever question those deductions being made from your pay?

A. Not the pails or finger cots. Sponges would be included, likely, on the pay I would ask.

The Master: You would question about the sponges?

A. Well, sponges and everything in general; bisque grind. They would deduct for that.

The Master: What you mean is that you questioned about whether your pay was properly computed?

A. That is right. Whether I got as much as I was supposed to have coming.

The Master: Irrespective of what form the deductions took?

A. Yes.

Q. (By Mr. Nunneley): And, they would tell you how many sponges were deducted, wouldn't they?

A. I don't know if they gave the number of sponges they deducted, or the price.

Q. Or the price, you don't know which they gave?

A. No, I don't remember for certain which they gave.

Q. And they would tell you on any of the other items that you had what was deducted, what it was for, didn't they?

A. Yes, they would tell us.

Q. And after they told you did you have occasion to complain that you hadn't gotten the articles which they told you?

Mr. Lamb: Objection.

The Master: I will overrule it.

A. It wouldn't do no good.

Mr. Nunneley: I asked if you ever complained—

Mr. Lamb: (Interposing) May I have the answer first?

The Master: He said, "It wouldn't do no good."

Q. (By Mr. Nunneley): Did you ever make the complaint that you hadn't gotten the articles which were indicated to you?

A. I made it plain that I wasn't satisfied with my pay sometimes when they would take so much time.

Q. I didn't ask you that. I asked you did you ever make the complaint that you hadn't gotten the articles which were indicated to you?

A. It all depends who you mean to make the complaint to.

Q. To anybody?

A. Went out to Mr. Doll? No, I never went to him. I made it to my foreman.

Q. You made it to your foreman that you hadn't gotten articles?

A. That I wasn't getting enough money, that I figured they deducted too much from me.

Q. And he filed it with the office and gave you the explanation; that is what you told us this morning, on general?

A. That is right.

Q. Do you know anything about what these articles cost, that you had the sponges for instance— • • •

A. No. I said only what I heard.

Q. What you heard?

A. Well, the finisher told me 30, 35, 65 cents for sponges.

Q. 65 cents for sponges?

A. Yes. They used to get a silk sponge, they called it, for 65 cents, as far as I remember; something like that.

Mr. Lamb: I think the company computation sheets will show that, your Honor.

Q. (By Mr. Nunneley): Do you know what any of these articles that you purchased from the company cost?—

A. No.

Q. (Continuing):—the company?

A. They never opened their books to me on that.

Q. Did you ever compare their prices with what ou could obtain the same article for somewhere else?

A. No, not on sponges, because the finisher knew what kind of a sponge he wanted, and I didn't.

Q. On these other things you bought?

A. There were very few things I ever bought in there that it wouldn't pay to walk outside and spend a couple of hours down town looking for. Maybe a roll of tape a year, or finger stall once a year.

Q. So it would be a matter of 10 or 15 cents, is that right?

A. I don't know.

Mr. Lamb: Won't the records be the best evidence of that?

The Master: If the witness knows. He bought them. He ought to have some idea.

A. I think a roll of tape was 27 cents, 26 cents; finger stalls was, light ones was two for a nickel, I guess, and the other ones was a nickel apiece.

Q. (By Mr. Nunneley): What else did you buy?

A. Pails.

Q. Yes.

A. New pails.

The Master: What did they charge for pails?

A. I don't know what they was.

The Master: Do you have any idea?

A. When they made out the order, they didn't have no price on, as far as I ever remember seeing one. They just put your name—and, I don't even know if they asked your number now, and the article on them.

Q. (By Mr. Nunneley): How many pails would you say you bought?

A. Within what period of time?

Q. Well, let's say 1940, just to give us something.

Mr. Lamb. There is an objection.

A. I wouldn't know.

Mr. Lamb: Just a second. It isn't a question of this witness buying anything. There were certain unauthorized deductions made. In other words, the question here assumes the very issue of law involved.

The Master: How many pails were you charged with over a year's period? How many pails did you have to need and get from the store?

Mr. Nunneley: You don't have to take Mr. Lamb's word for it. He had to get an order to get it.

Mr. Lamb: There were pails the finishers got that were deducted from this man's pay.

Mr. Nunneley: We will find out.

The Master: There is no use arguing about that. How many pails would you get from the store a year? How many would you need?

A. I don't know. I just bought one or two pails there since the last walk-out.

The Master: Since the last walk-out?

A. Or the walk-out. The first strike was in April.

The Master: Have you been working there steadily since then?

A. Up until this strike, yes.

The Master: When was the second strike then?

A. In November.

The Master: That is from April to November you bought one or two pails?

A. Yes, I think I did during that time.

Q. (By Mr. Nunneley): How many would you say you bought in 1940?

A. I don't know if I bought any or not, for sure.

Q. You don't know if you bought any or not; or in 1939?

A. I wouldn't be able to say. I don't remember.

Q. Or in 1938?

A. I don't know.

Q. Well, witness, this matter of pails isn't a matter of many dollars, is it?

Mr. Lamb: Objection. Immaterial.

The Master: I will overrule the objection.

A. Not to me personally, no.

Q. (By Mr. Nunneley): The company furnished some pails, didn't they?

A. They never furnished any to me.

Q. Never furnished any to you. Isn't it a fact that they always furnished one pail to start off with? • • •

A. Well, I wouldn't say it was furnished by the company. I don't remember how many pails I bought when I first started to jigger, but even then it was not furnished by the company. It was furnished by the fellow who worked there before I did. He was the guy that bought them in the first place.

Q. (By Mr. Nunneley): Would the pails wear out? Is that the reason you had to get new pails?

A. Yes, they wear out.

Q. I say, is that the reason you had to get new pails, is they wore out quite frequently?

A. Wore out, and someboody else take them. • • •

Q. Now, so we can get some idea of this, you say you bought two pails a year?

A. I wouldn't know if it run that much or more or what.

Q. What?

A. I say I wouldn't know whether it run that much or more.

The Master: I know you don't know exactly, but do you have a rough idea; what is your best approximation as to about the number you would use, or you would have to get from the store in a given year?

A. Why, I wouldn't be able to say, maybe one a year, because we keep changing jobs, and the guy that maybe I went on to work with on the job sometimes would be there, and the other guy would quit and leave his pail there, and like that.

The Master: Sometimes you would fall heir to other people's pails?

A. Yes; only one fellow took his pail that I know of.

The Master: And sometimes somebody else would take your pail away from you and you would have to go and get another one?

A. That is right. • • •

Q. (By Mr. Nunneley): And the cost of a pail was about 25 cents, wasn't it, witness? • • •

A. I don't know what they charged for them. • • •

The Master: Didn't you ever find out when you asked the foreman?

A. I have heard 28 or 30 cents.

The Master: You heard that from the foreman or the men around the shop?

A. Just general talk.

Q. (By Mr. Nunneley): They varied from time to time, didn't they?

A. I don't know, that is just what I heard.

Q. You don't know whether you paid more than the company paid for the pail or not, do you?

A. No, they never gave me no receipt.

Q. And the same is true for any other article that you bought, you don't know whether you paid more than it cost the company or not, do you?

A. That is right; I have no receipt or nothing to show for it.

Q. And outside of the things that the finisher got, you couldn't get anything, and didn't get anything then without signing an order for it, did you?

A. Without me signing an order?

Q. Yes.

A. I don't think it was required for me to sign, even no matter what I got. I think the fellow at the stock room put your name and number down, he would ask your name or number, I don't remember what it was, asked you what you wanted.

Q. At least something was taken out, or nothing was sent over to you and charged to you unless you went and got it, isn't that right?

Mr. Lamb: An objection, isn't the foreman the one that made the deduction of the items for finishers, for instance?

The Master: I don't understand it that way, I thought his testimony was otherwise, but we will find out from the witness. Read the question.

(Question read.)

The Master: Is that right?

A. I wouldn't know about that, whether somebody else got stuck under my name or not, I wouldn't be able to say. I know the finishers can go over and get sponges under my name, and they did, but anything else, if I didn't get it myself, I don't know whether they charged me for stuff I didn't get or not, no way of me telling.

Q. (By Mr. Nunneley) Let's put it this way; did they ever send over anything to you and tell you you had to buy it?

A. Not that I can recall, no. • • •

February 25, 1942

EARL WILLIAM LARIMER, was thereupon called as a witness on behalf of the Plaintiff herein, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Goerlich:

Q. Will you state your name, please?
A. Earl William Larimer.
Q. And your address?
A. 6 Smith Street, Mt. Clemens.
Q. Mt. Clemens, Michigan?
A. That is right.
Q. You have been an employee of the Mt. Clemens Pottery Company?
A. Yes, sir.
Q. For how many years have you been an employee of the Mt. Clemens Pottery Company?
A. It is the only place I have worked in the past twelve years with the exception of three weeks at Hudson Motor here in the last month or six weeks.
Q. Will you tell us when you terminated your employment at Mt. Clemens Pottery, when you stopped working there?
A. It was, I believe, around November 22nd. Is that right? When this last strike started—November 22nd.
Q. That is 1941?
A. That is right.
Q. Prior to that time you worked twelve years at the Pottery Company?
A. That is right. That is the only place I worked in twelve years.
Q. Tell us what department you worked in, witness.

A. Clay department. • • •

Q. Is that the same department that Mr. Metz works in?

A. That is right.

Q. Will you tell us what type of work you are engaged in in that department?

A. For the past five years I have been an oval ware jigger man. • • •

Q. And, where do you procure the clay from which you mold the dishes? • • •

A. That comes from another department where it is mixed up ready to make the dish with.

Q. That is brought into your department?

A. That is brought into our department.

Q. You work with that clay?

A. That is right.

Q. Make these various articles of which you have testified?

A. That is right.

Q. Now, what is done with these articles after you have finished your work on them?

A. Run through a mangle and dried, and then the finisher takes it off the molds and finishes it up, gets it ready so that it can be put through the kilns to be burned.

• • •

Mr. Goerlich: I might say these questions I am addressing to the witness now are for the purpose of showing interstate commerce; and as I understand it, the defendant is unwilling to concede that the employees, herein, the plaintiffs herein are engaged in interstate commerce. So I suppose we will have to go through in detail what the employees do, and show that they are a part of a stream shipped outside the state.

Now, we could save some time if the defendant would concede they are engaged in interstate commerce.

Mr. Cooper: If that is the purpose, I will note my objection, on the ground that it does not come within the complaint. The complaint makes certain allegations with

reference to the nature of the business of the Mt. Clemens Pottery Company, a number of which are admitted in the answer, and the question as to what type of activity employees are engaged in, however, I can find nothing in the complaint as to that.

As I understand it, it is necessary not only to prove but to plead the facts on which any claim must be based, and I note an exception to any such proof. • • •

The Master: Well, this is all a matter of argument. I will take the proofs. You have your objection on the record, and I will take whatever proof they have to offer on the interstate commerce angle here.

Mr. Goerlich: I think we got as far as the kilns, witness.

Q. (By Mr. Goerlich): Now, will you tell us what happened after the products upon which you worked are placed in the kilns?

A. They have what they call a continuous kiln and the cars are loaded and go through this kiln and are burned and when they come out they are unloaded out of the car, and from there they are taken to the dipping room.

Q. Then what is done in the dipping room?

A. Then the ware is brushed and glazed and then it is loaded on to the gloss kilns, in cars again, and from there it goes through the gloss kilns and is burned again. This time when it comes out it is burned to a glaze finish, and from there it is unloaded out of the cars, goes on the chipping belt.

Q. Then where does it go?

A. From the chipping belt it goes probably from there to the decorating room and is decorated, either decorated, lined, or possibly some of it may be shipped out just in plain green or blue glaze, which would possibly go from there to the packing shed.

Q. And then where is it sent after it is decorated, after it is fully completed?

A. After it is decorated it is burned again through

another kiln and then it comes out in finished ware and then it is either loaded in cars or else stored in what they call the packing shed.

Q. Stored where?

A. Either loaded in cars or stored in the packing shed, that is in the storage room.

Q. Now, does the company in any manner segregate the ware which you make?

Mr. Cooper: If the witness knows.

Q. (By Mr. Goerlich): If you know?

A. No, I don't know, outside of they have said it is for the Kresge Company. * * *

Q. (By Mr. Goerlich, continuing): Metz worked in the same department you did, did he not?

A. That is right.

Q. Was your ware sent through the kilns separately or was it mixed with his ware, or other ware, do you know?

A. It was all sent through together on the same car, but probably in different saggers. I don't know just how they loaded those saggers. * * *

Q. (By Mr. Goerlich, continuing): I am handing you herewith, witness, what have been marked for identification Exhibits 34 to 34-KK. Will you tell us what they are, witness (handing exhibits to witness)?

A. They are my time cards. Do I have to go through all of them?

The Master: No, don't go through them all.

Q. They are time cards that you punched at the Mt. Clemens Pottery Company?

A. That is right.

The Master: Speak up, witness, so that we all can hear you.

Mr. Goerlich: We offer them in evidence.

Mr. Nunneley: If the Court please, we object to the cards for the reason, in addition to the reason that we have brought up on the other cards, the particular reason as to these cards, that there is no showing and it appears on the face of the cards that the majority of them do not

show anything which might in any way demonstrate or prove a violation of the Wage and Hour Act, or that the man worked, under anybody's theory, over the legal limit, and we maintain that all of those cards which do not show that are not competent evidence; that the record should not be cluttered up with them, and that they have no place in this lawsuit. • • •

The Master: I don't think the rules of evidence are being violated in admitting these cards in evidence. I am sure in every case you get proof that is broader than the final decision of the Court. The Court will, after having the proof admitted, separate out certain items and say that those are not necessary to a decision in the case, and there is certainly no violation, in my opinion, of the ordinary rules of evidence here. These cards are all of the same type and even if some of them on plaintiff's theory do not show a violation of the Wage and Hours Act, it doesn't follow that they are not relevant, even if the separation had been made, because what the company's practice, and what the employees' practice is is one of the things that is in issue here. I am not going to permit too much time in argument, because my mind is made up on it. I may be wrong. You have stated your position, you have got your objection, and I will overrule it.

Mr. Cooper: There was one other objection.

The Master: Make it very brief.

Mr. Cooper: This other one has been stated, and I am not proposing to reopen the argument. I want to renew it. That is that the particular cards are not any evidence of the hours worked. • • •

The Master: Go ahead with the questioning of the witness. I will withhold the ruling on the cards until I read this. I am quite sure what my ruling is going to be.

Q. (By Mr. Goerlich): Witness, will you tell us what the time designated, the time appearing on the time card means?

A. The time designated?

Q. The time on the time card, what does that mean?

Mr. Cooper: Objection to the form of that question. It calls for a conclusion.

Q. (By Mr. Goerlich): What does it indicate?

The Master: I will overrule the objection.

A. It indicates the time we started to work.

Mr. Cooper: I move that the answer be stricken on the same ground. It is merely a conclusion. Your Honor wouldn't rule yesterday that you couldn't ask questions about that very thing, and insisted we must state precisely what was done so the Court can make his determination as to what was done.

The Master: I will ask the witness, what do you mean when you say it was the time you started to work?

A. We generally punched our clock and got right in there and got to work; we never wasted any time, that is about the size of it.

The Master: Describe just what your procedure was as you came to the plant in the morning, just what did you do?

A. Before we punched the clock?

The Master: Well, from the time you left home until the time that you started production.

A. I generally came 15 or 20 minutes early and sat down in the dressing room until, if we started at six, we were supposed to punch in at 14 minutes to six, or as near that time as we could, and we would get in line and wait our turn to punch the clock, and if it would be 13 till, or whatever time, and then it would take probably a minute and a half at the most to walk to my job and from there we started right in to work.

The Master: What do you mean when you say you started in to work after you walked to your job? What sort of work did you do then?

A. Prepared the job to work like giving the finisher water and boards; get boards for the finisher. Maybe have to move a truck or oil the jigger up, and start the switch, or throw the switch and get the job running. It would take possibly three minutes. And then we would go right on to production work.

The Master: The witness' statement as to—that he

started work immediately upon punching the time clock will not be accepted as evidence of what he did. The detailed statement of what he actually did will be accepted; that is, the statement that he worked will not be accepted as a conclusion or as binding upon the Court, that he began work, that the employer is liable for at that time. That is the issue in this case.

Q. (By Mr. Goerlich): Now, witness, will you tell us whether or not you ever did any work which does not appear as hours worked on the time card?

A. I have, yes.

Q. Any type of work? Will you tell us what that was?

A. I have changed molds.

Q. Now, will you tell us when that took place?

A. That was back in the latter part of 1938 and '39.

Q. With reference to October, 1938, when did that start? Was it before, or were you engaged in that on October, 1938?

A. When the Wage and Hour Law came into effect.

Q. You were engaged in this work?

A. That is right.

The Master: You mean you were doing the work before the Wage and Hour Law came into effect, or did that start at the time the Wage and Hour Law came into effect?

A. At the time the Wage and Hour Law came into effect. That is when we start watching the time clock and not getting too many hours in.

Q. (By Mr. Goerlich): You say the work was changing molds?

A. That is right.

Q. How long did that continue?

A. Through '39.

Q. Remember what month in '39 that it ceased?

A. Well, probably in October.

Q. October, 1939?

A. That is right.

Q. Now, will you tell us how often you engaged in this type of activity?

A. Practically every week.

Q. How many hours per week did you engage in this activity, witness?

A. An hour and a half, at least.

Q. Never less than an hour and a half?

A. Never less than an hour and a half.

Q. What was the maximum amount that you engaged in this activity?

A. Two hours, two hours and a half.

Q. That does not show on your time cards?

A. It does not.

Q. Will you tell us the reason for that, if you know, witness? • • •

The Master: How did you know that was the reason; did anybody tell you?

A. The foremens told us it was all right to do it.

Q. (By Mr. Goerlich): All right to do what?

A. To punch our clock in and save that time, and do this work that we didn't get paid for on our own time.

Q. Did they tell you why you should do that?

A. Because they had to pay time and a half overtime.

The Master: Is that what he told you? Is that what the foreman told you, or is that your conclusion?

A. They said they would not pay time and a half for overtime.

Mr. Cooper: I renew my motion to strike.

The Master: With his answer having been clarified, I will strike the previous answer given, and permit this answer to stand as to what was told.

Q. (By Mr. Goerlich): You heard some testimony yesterday concerning deductions, did you not, witness?

A. That is right.

Q. Will you state whether or not deductions were made from your wages?

A. There was.

Mr. Cooper: Pardon me, I object to that. First of all, renewing our objection on any testimony as to deductions; secondly the form of the question, I think, is im-

proper. We can't tell what the testimony is referring to. There has been a great deal.

Mr. Goerlich: I will ask him what deductions, and that is all there is to it.

The Master: If he limited the question, you would probably object on the ground it is leading, if he defined the exact type of deductions he had in mind—I will know from his next answer whether or not it pertains to the issue. I think that is a rather super-technical objection.

Q. (By Mr. Goerlich): Will you tell me what deductions were made from your wages by the company?

A. They charged us for sponges, they charged for inspection, crooked ware, a man wheeling out molds, and water pails.

Mr. Cooper: Pardon me. May I ask—as I understand it, the witness refers to sponges, inspection, crooked ware—

The Master: Read it back.

(Answer read.)

Q. (By Mr. Goerlich): What do you mean by "wheeling out molds"?

A. That would be molds that we would break, or old molds on the job that would be thrown on the floor, and they would be cleaned up every day. They would have a man do that.

Mr. Goerlich: That is all, witness. Did the Court make a ruling on the cards?

The Master: I had to follow the witness' testimony and I haven't read this carefully. This transcript seems, or this part of the transcript has the remarks of the Court, in which he says that he might, if he were running the plant, he would expect the employees to get there before 7. I suppose the objection is based on the contention that even if the cards show the employees got there a few minutes before 7, it doesn't necessarily follow that a violation of the Wage and Hour Act is involved.

Of course, just introducing the cards and nothing else

would not convince me of much of anything, but as part of the testimony of the witness, to supplement his testimony, they are certainly proper.

I will admit them and overrule the objections.

The witness: There is one more deduction. Can I state that, too?

The Master: The witness states he wishes to state one more deduction. Go ahead.

A. That is for grinding ware.

Q. (By Mr. Goerlich): Grinding what?

A. Ware.

Q. Grinding ware. What do you mean by that, witness?

A. That would be ware that went through the kiln that would come out with little rough spots on that they would grind off.

Q. One more question I might ask while Mr. Cooper and Mr. Nunneley are conferring here, and that is, did anyone from the management ever advise you as to what time you should punch the clock?

A. One time I had my 42 hours in and I went to the foreman and told him, and he told me I would be doing him a favor if I went out and punched in and went back to work.

Q. What foreman?

A. Robert Fitten.

The Master: What was the name of that foreman?

A. Robert Fitten.

The Master: Fitten.

Q. (By Mr. Goerlich): Were there any instructions concerning daily punching of the time clocks?

A. In starting to work, when we would start, they would come around and say, "14 till," and if it be the afternoon shift and they wanted you to start at a certain time, they would come around and say, "2:31."

The Master: When you say "they," who are you referring to?

A. The foremen in the Mount Clemens Pottery Company.

Q. (By Mr. Goerlich): That is the time that shows on your time clock card; is it?

Mr. Cooper: Objection.

Mr. Nunneley: The cards will show that.

The Master: I will sustain the objection.

Q. (By Mr. Goerlich): Is that the same time that shows on the time card?

Mr. Cooper: Same objection.

A. Not exactly the same time. There may be a minute or two or three minutes difference, depending where you were in line when you punched in.

Mr. Cooper: I move that the answer be stricken.

The Master: The answer seems to me proper. I did not think the question was.

Mr. Goerlich: The witness understood what I meant even if Mr. Cooper didn't.

The Master: You say, "Is that the same as shown on the time clock cards."

Mr. Goerlich: Yes.

The Master: I think I will leave the testimony in. If one stopped to consider carefully each ruling, we would never get a trial finished. You have to have some summary rulings.

Cross Examination

By Mr. Nunneley:

Q. How long did you say you worked there at the pottery, Mr. Larimer?

A. It is the only place I worked in the last 12 years, except in the latter part of January, I worked at Hudson Motor Car.

The Master: Is that January of this year?

A. This year, yes.

Q. (By Mr. Nunneley): You are now employed at the Hudson Motor Car Company, is that right?

A. No, I am not.

Q. You went to work there when?

A. In the latter part of January.

Q. This year?

A. That is right.

Q. This year. And so that starting in January you got a job at Hudson Motor?

A. That is right.

Q. And have been working there until recently?

A. Until I was laid off, I believe a week ago last Thursday.

Q. Yes.

A. Two weeks this coming Thursday.

Q. And prior to that time you had left your employment at the pottery and gone on strike, is that right?

A. Went on strike, that is right.

Q. Then later you obtained some other employment and went to work for Hudson's, that is right?

A. I went out and got work, that is right. . . .

Q. (By Mr. Nunneley): I see. And you also participated in the strike last spring?

A. That is right.

Q. And how long were you out of work at that time?

A. Five weeks.

Q. And you went back to work under the same conditions that were there before you struck, didn't you?

A. Not according to our understanding.

Q. Well, when you got in there you found the conditions just the same, didn't you?

A. They had changed quite a bit after the first strike.

Q. I see. As far as the clock cards were concerned, they were punched and handled just the same as they were before, weren't they?

A. No, instead of coming around and saying 6:16, they would come around and say, "Six o'clock," if they wanted you to start they would say, "Six," they wouldn't say "14 minutes till."

Q. They changed that?

A. That is right.

Q. And told you "Six o'clock." It meant the same thing, didn't it?

A. It meant to start at six, that is right.

Q. It meant the same thing?

The Master: It meant to start what at six?

A. Start work at six.

The Master: What kind of work do you mean?

A. Production or getting the job ready to do the work.

The Master: Did that mean you were supposed to punch the time clock at six?

A. No, that means we could come in before six, but we didn't have to start until six.

Q. (By Mr. Nunneley): At least after the first strike, then you don't pretend that you have any claim after the first strike because the orders then were that you couldn't start to work until six o'clock.

Mr. Goerlich: He didn't say that.

A. They didn't tell us we couldn't, they didn't tell us to start before six.

Q. (By Mr. Nunneley): On the other occasion, your claim is that they told you the time clock would be open at a certain period, didn't they?

A. That is right.

Q. And you could come in at that time?

A. At that time. • • •

Q. (By Mr. Nunneley): If you didn't get in there and get on the job until six o'clock you weren't penalized, were you?

A. Not after the first strike.

Q. Before the first strike?

A. Before the first strike, if you weren't on the job working, the boss would be up and down the line raising "h-e-l-l" until about five minutes to six, at least. • • •

Mr. Goerlich: You mean by "working" running the jigger?

A. That is right.

The Master: Please confine your statements to objections to questions or requests for clarification, rather than directly asking the witness. It is confusing to have two

attorneys asking the witness questions. I will ask, however, what do you mean by "working"; when you say the foreman would raise the devil, if you didn't start working by five minutes to six?

A. If you weren't on the job ready to go to work, or getting your job ready to go to work.

The Master: If you weren't over at your station where you finally worked?

A. That is right.

The Master: Getting ready to work?

A. That is right.

The Master: Or getting ready for production work by five minutes to six, the foreman criticized you?

A. That is right.

Q. (By Mr. Nunneley): Are you an officer of the plaintiff union?

A. I am not.

Q. How long have you been a member of it?

A. Since the first strike, April 14th, if I am not mistaken.

Q. You joined it at that time?

A. That is right.

Q. You weren't a member prior to the first strike?

A. No, sir.

Q. And did you sign a designation to be a party to this suit?

A. I did.

Q. Did you ask others to sign it?

A. I didn't.

Q. How did you come to sign it?

A. Because we were told that it was a violation of the Wagner Act, the way they were doing things.

Q. You were told it was a violation of the law, is that right?

A. Yes.

Q. And you were told that you had some money coming, is that right?

A. Not exactly, no.

Mr. Goerlich: I want to object to this line of questioning. I don't see the relevancy of it.

The Master: I will overrule the objection. It is proper cross examination.

Q. (By Mr. Nunneley): Did you say "Not exactly," what were you told on that subject?

A. We were told that there was a wage and hour law.

Q. Yes.

A. That would take care of cases like that. • • •

The Master: Were any of these conversations that you had which led you to sign this designation, with an attorney representing you, or were the conversations with any attorney representing you?

A. No.

Q. (By Mr. Nunneley) Who were they with?

A. With the union.

Q. With the union?

A. That is right.

Q. Who?

A. Our president.

Q. Mr. Anderson?

A. That is right. • • •

Q. (By Mr. Nunneley): Now, Mr. Larimer, what was said to you about paying the expenses of the litigation?

Mr. Goerlich: Objection.

A. There was nothing said.

The Master: I don't see the materiality of that. • • •

Q. (By Mr. Nunneley): When did you first hear about the suit, Mr. Larimer?

A. Back in April, 1941.

Q. In April, 1941, you heard about the suit. And you had heard about the Wage and Hours Act before that, hadn't you?

A. That is right.

Q. And you had heard that you were only allowed to work a certain amount of time before that?

A. That is right.

Q. And you had heard that there was one period in

which you were only allowed to work 44 hours a week, didn't you?

A. That is right.

Q. And you had heard that there was another period in which you were only allowed to work 42 hours a week?

A. That is right.

Q. And another period under which you were only allowed to work 40 hours a week?

A. That is right.

Q. You had heard that?

A. That is right.

The Master: Of course, all those periods you haven't applied the statement that they were only allowed to work that amount of time on straight time.

Q. (By Mr. Nunneley) On straight time, without being paid overtime in those cases; you knew about that?

A. That is right.

Q. And you also knew and had been told that if you worked overtime, you were entitled to be paid, if you worked over those hours, didn't you?

A. No, because they didn't do that out there. They didn't pay overtime.

Q. I say, you knew that you were supposed to only work 44 hours without getting any overtime; you knew that, didn't you?

A. I knew that was the law.

Q. You knew that was the law.

The Master: You knew under the law you were entitled to time and a half for overtime?

A. That is right. . . .

Q. Well, they used the same method of computing time all during that period, didn't they, all the time after they put the time clocks in, they used the same method, didn't you?

A. Since the Wage and Hour Law went into effect, yes.

Q. The time clocks were in there before that, weren't they?

A. I believe they were.

Q. As a matter of fact, the time clocks have been in there since about 1934, isn't that right?

A. I couldn't state the time.

Q. Well, anyway, they were before November of 1938, weren't they, the time clocks in there?

A. I believe they were. • • • •

Q. (By Mr. Nunneley) During the period that you worked there, you knew how your time was computed, didn't you?

A. That is right.

Q. And you knew that over in the left-hand column, the last column on all of the cards, there was a figure in pencil?

A. That is right.

Q. And you knew that that was the figure—you saw that was there every day, wasn't it?

A. One day you punched in and the next day it was marked down, that is right.

Q. So that on the succeeding day the amount of time that you were credited with the day before was always shown on your card?

A. According to the company.

Q. According to the company's computation?

A. That is right.

Q. And you knew about the law all during that time, didn't you?

A. That is right.

Q. Did you ever ask the company to pay you for that before you started this suit? • • •

A. No.

Q. Did you ever make any complaint to the company?

A. No, because I knew— • • •

Q. (By Mr. Nunneley) So that you never had any conversation with any officer of the company about it at all, did you?

A. Not the hours, no.

Q. The officers were where you could have talked to them, weren't they?

A. That is right.

Q. Now, after November, 1939, you don't claim any extra for changing molds, that is right, isn't it?

A. No, I changed molds for nothing up until they

started to pay for them, possibly around the first part of 1941.

Q. All right, I mean you don't claim there are any hours that are not on the cards?

A. No, I don't.

Q. All right, so so far as hours on the card is concerned, that is a matter that goes back of November, 1939?

A. That is right. • • •

Q. During all the period up there and in the course of your employment the question of paying for changing molds—that has always been one of the things your kind of an employee did without any pay, isn't it, excepting as it is included in his piecework rate; isn't that right?

A. Up until '41. • • •

Q. (By Mr. Nunneley) When was the system changed so that you did get paid for changing molds?

A. As near as I can state around the first part of '41 or the last part of '39.

The Master: After that did you get paid for changing molds?

A. $2 flat rate. • • •

The Master: Let us get these dates clear. He got confused there. You mean the first part of '41 or last part of '40, is that what you are trying to say?

A. That is right. That is when they started to pay.

Q. (By Mr. Nunneley) A new arrangement was made sometime either in the last of '40 or first of '41 whereby you were allowed $2 for changing molds?

A. That is right.

Q. That is right. Prior to that time how many years had you worked there?

A. Around 11 years.

Q. And you had changed molds during all of that period?

A. Not all of it, no. When I first started to work there I did not know what it was to change a set of molds.

Q. How long were you a jigger man?

A. Five years.

Q. That is a—jigger men are the fellows that change the molds, is that right?

A. No. Jigger men and batter-out together.

Q. Jigger man and batter-out together. Were you a batter-out before you were a jigger man?

A. That is right.

Q. How long were you in both of those jobs, then?

A. Batting-out? Five or six or seven years, somewhere around there.

Q. Now, during all of that time that you worked there you say you did change molds?

A. That is right.

Q. That is right. And during all of that time you knew that, at least, that you weren't going to get paid for it, didn't you?

A. When they started making us change every week.

Q. I mean, I say during all of that time you knew you weren't going to get paid for it, didn't you?

A. That is right.

Q. And you knew that as far as the company was concerned that that was a part of your job, to change those molds?

A. When the molds was wore out, yes. . . .

Q. As to this method of computing the time which was followed there, you understood it, didn't you?

A. I understood the method the company had, that is right.

Q. That they paid you, when you went in in the morning, they paid you from the succeeding quarter-hour: that is right?

A. That is the way they figured it, that is right.

Q. And when you went out in the afternoon, they paid you from the preceding quarter-hour?

A. That is right.

Q. They figured your time from that?

A. If we went in there and worked 7 hours, according to their time, worked 7 hours and 40 minutes, their record shows we worked 7 hours.

Q. You never got paid by the hour, did you?

A. That is right. They keep their records by the hour, though.

Q. They keep their records by the hour, but I say you never got paid by the hour?

A. That is right.

Q. You got paid for what work you turned out?

A. That is right.

Q. So that whatever work you did, you have been paid on all your straight time anyway, haven't you? . . .

A. I don't think I ever got paid full pay as long as I worked there.

Q. (By Mr. Nunneley) You don't think you ever got paid full pay. Can you tell us any week you didn't get paid all the money that was coming to you?

A. No particular week, or 2 weeks, you mean?

Q. Any 2 weeks you didn't get paid all the money that was coming to you for all the work you turned out.

A. Every pay I ever worked there, with my deductions out, I never got paid for it.

Q. You worked there 12 years?

A. That is right.

Q. And you never got paid your full pay?

A. My full wage. They always had anywheres from three to five, six dollars deductions.

Q. You understood there was those deductions right along, didn't you, certain things were taken out?

A. That is right, and they would keep adding them on you as you go along, whatever they want to stick on you.

Q. You are still striking, and you want to go back to work for those people, do you?

A. I want to go back to fair conditions, under a good organization, that is right.

Q. Under a good organization, that is fine. And you don't want to pay for these things we are deducting?

A. What I am asking for is my full pay I got coming.

Q. How much an hour did you get over to Hudson's?

Mr. Goerlich: Objection.

A. I don't see that it is material. I will sustain the objection.

Q. (By Mr. Nunneley) Did you punch a time clock at Hudson's?

A. Yes.

Q. (By Mr. Nunneley) Was your time put on the card every day?

A. Every day.

Q. And did they figure it to the minute?

A. They have an agreement with the Union—

Q. (Interposing): I didn't ask you about that; I asked you if they figured it to the minute.

A. They figured it from the 7 o'clock whistle blowing until the 3:30 whistle blowed at night.

Q. They figure from whistle to whistle?

A. That is right.

Q. Regardless when you punched in?

A. Regardless.

Q. Did you punch in before 7 o'clock?

A. Yes, sir.

Q. How long before 7:00?

A. 6:30, mostly.

Q. 6:30. So that you punched in at 6:30 and they only figured you from 7 o'clock, is that right?

A. That is right.

The Master: What did you do between 6:30 and 7:00?

A. I went in and sat down and took it easy till the whistle blowed. Then I got up and put my apron on after the whistle blowed and started work.

The Master: Did you have to be at your station by the time the whistle blew?

A. Supposed to be on the job at 7 o'clock.

The Master: How far was that from the time clock at Hudson's?

A. Oh, I would say five or six hundred feet.

The Master: Were you paid on an hourly basis there at Hudson's?

A. That is right.

Q. (By Mr. Nunneley) So that at Hudson's they allow you a half-hour leeway, is that it?

A. I drove from Mt. Clemens and I allowed myself

plenty of time for flat tires and everything, to get there on time, and if I was a little early, on my way in I passed the time clock and I punched in. I had no reason to come back and punch at 7 o'clock. I was allowed to punch it then.

Q. You knew your starting time at Hudson's was 7 o'clock?

A. That is right.

Q. But you were allowed to punch in at 6:30 if you wanted to?

A. (No audible response.)

Q. Were you allowed to punch in before 6:30?

The Master: Just a minute, you nodded your head to that previous question. Did you mean "yes"?

Read back the question again.

(Question read.) • • •

Q. There is no doubt about this then, your time clock record over at Hudson's, for instance, doesn't show how many hours you work either, does it?

A. No, but I know when I went to work whether I went in there before 7 o'clock or not.

Q. I say, your time clock card doesn't show, does it?

A. Sure it shows how many hours I worked, sure.

Q. 6:30, you punched it at 6:30, you mean it shows you work from 7:00?

A. That is right, it shows I started work at 7:00. • • •

Q. Where do you live, Mr. Larimer?

A. Mt. Clemens.

Q. And whereabouts in Mt. Clemens?

A. 6 Smith Street.

Q. So you are quite close to the pottery?

A. That is right.

Q. Did you walk over there, or drive over?

A. Generally drove.

Q. Generally drove over. And your work on this—you say some deductions were made in your pay at different times, is that right?

A. They were.

Q. Did you say you knew or don't know what they were for?

A. I know what they was for.

Q. You know what they were for?

A. That is right. Most of them, anyway.

Q. Most of them. Did you ever check with the foreman about it, or the management, as to whether they were right or not?

A. When I thought I would be short on my pay, I would go and check with them and find out they had about five or six dollars expense money charged up to me.

Q. And they would tell you what it was for, wouldn't they?

A. That is right.

Q. And one of the things that it was for was grinding ware, is that right?

A. That is one of them.

Q. And, now, just what is meant by that?

A. That is ware that may be clay dirt that they call it in the plant. It goes into the kiln, and it was burned, comes out a little bit rough; they grind it off with an emery wheel, two or three girls grinding—one, two or three girls, whatever they need.

Q. In other words, that is ware that is defective ware?

A. That is defective ware, but we pay for knocking the defects off whether it is our fault or not.

Q. And that has always been the practice ever since you have been there as a jigger man or batter-out, wasn't that right? * * *

A. Since I have been jiggering, I think that has been the practice. * * *

Q. You have worked in other potteries?

A. That is right.

Q. Where?

A. In Ohio.

Q. And how long ago was that?

A. Oh, that is back when I was a boy, 20 years ago.

The Master: What pottery is that?

A. They called it the Porcelain Plant.

Q. (By Mr. Nunneley): Make dishes?

A. That is right; dinner ware.

Q. And, what was your job then?

A. In the packing shed.

Q. Do you know how the jigger man and batter-out and finisher got paid there?

A. Yes.

Q. How was that done?

A. At that time the jigger man got paid, and he paid his finisher and batter-out.

Q. That was the old custom?

A. That is right.

Q. That jigger man hired his own batter-out and own finisher, isn't that right?

A. Yes.

Q. That practice since you worked at Mount Clemens, that practice ever appeared there, is that right?

A. No.

Q. Do you know whether the jigger man also paid for the sponges down there in Ohio?

Mr. Goerlich: Objection.

Mr. Nunneley: I am asking him whether he knew.

A. I don't know.

The Master: I will overrule it.

Q. (By Mr. Nunneley): During the period that you were here, at least most of the period that you were a jigger man or batter out up here, you did pay for some sponges?

A. Plenty of them.

Q. And who bought the sponges?

A. Up until some time in '41 I bought them—the jigger man, rather.

Q. The jigger man?

A. Paid for them.

Q. Paid for them?

A. Charged for them; that is right.

Q. During all the time you were a jigger man that

was a part of the established practice and custom in the plant, wasn't it?

A. As far as I know.

Q. And, did you know that before you went to work as a jigger man?

A. No.

Q. As soon as you got—when you were batter-out do you mean to say you didn't know who bought the sponges?

A. I never paid any attention.

Q. You never paid any attention then, but as soon as you got to be a jigger man you discovered the jigger man had to pay for sponges?

A. That is right.

Q. And the girl who was known as the finisher used them?

A. That is right.

Q. (By Mr. Nunneley): Let's see, witness, over there in that plant there is a store, isn't there; stock room?

A. Stock room.

Q. Stock room, yes.

A. That is right.

Q. And it is in the stock room that the sponges were obtained, isn't it?

A. That is right.

Q. Did you go over to the stock room and get the sponges?

A. I got what I used myself. The finisher got what she used for herself.

Q. So that some of the sponges, at least, you went over and got yourself, didn't you?

A. The type I used, yes.

Q. Yes. And, did you sign for them, or did you just tell the man—

A. (Interrupting): I just told him my name and he wrote my name down.

Q. Told him your name and he wrote your name down?

A. That is right.

Q. So, when you got them, you knew, you expected to pay for them, didn't you?

A. Oh, yes, I knew that.

Q. And the girl that worked with you, she went over and got sponges, is that right?

A. That is right.

Q. And you knew you were expected to pay for the sponges that she got, too, didn't you?

A. That is right. • • •

Q. The finisher kept track of the number of articles that you made. She got paid for the same number that you did? She, or if there was two of them, between them?

A. Not always.

Q. If there was two of them, the finisher or finishers, if there was two, they got paid for the same number you did?

A. That is right.

Q. And the batter-out, he got paid for the same number you did?

A. That is right.

Q. All based on the finisher's count?

A. That is right.

The Master: Just a minute. As a matter of curiosity, how did this finisher make this record? Did she have a pencil in hand?

A. No, they put so many dozen on a board. There is 15 boards on a truck, and the job I worked on mostly, there is three and a half dozen to the board, and 52½ dozen on a truck. They counted by the truck, really. Every time the truck went away, we would count a truck of ware or 52½ dozen.

The Master: What kind of record did she keep?

A. The company had tickets that they would put one duplicate and one original, and as the truck went to the belt, we would get the duplicate back, and they would keep the original.

The Master: So that there was no chance for the girls' records and the company's records to conflict as to production?

A. That is right.

Q. (By Mr. Nunneley): So that if you cared to, anyway, you could keep those duplicates, couldn't you?

A. We generally kept them until after we got paid and then destroyed them.

Q. Why did you keep them until you got paid?

A. To see if we come anywheres near close to what we thought we ought to.

Q. If you discovered you didn't get paid for the number of dozens that you had made, you would make some inquiry about it, wouldn't you?

A. That is right.

Q. And was there ever any occasion when there was an error in it?

A. There have been.

Q. Did they make the errors right?

A. That is right, they did.

Q. You didn't get fired for doing that, did you?

A. No. I am still working—or was. . . .

Q. These sponges, how much did you say the sponges cost the company each?

A. I don't know what they cost the company.

Q. Well, you said a few minutes ago that you were charged twice what they cost. How do you know that, Mr. Larimer?

A. Well, just—

Q. (Interposing): Now, just answer the question. If you don't know what they cost, will you just explain to the Court why you said to the Court that they charged you twice what they cost?

A. Now, they quit charging us for sponges. Mr. Parrot told the girls if they could go out and buy a 10-cent sponge and use it in there, it was okay with them. Yet they would charge them 45 cents. Now, why would they tell the girls to do that, after they quit charging us for sponges?

Q. They never quit charging for sponges, did they? You know they charged the finisher.

A. I thought they allowed them four sponges, and if it went over that, they charged them.

Q. You said you were charged twice as much as the

sponges cost, that you were using. Now you say you don't know what they cost, do you?

A. No, I say I don't know. • • •

Q. How good the sponges was, and all that. Now, what other article do you say there was a deduction for?

A. Water pails.

Q. Water pails, all right. How much of an item was the water pails?

A. That was a small item.

Q. All right.

A. Possibly we would buy a couple pails, maybe two or three pails every four or five months, six months. I don't know just how often. • • •

Q. All right. Now, what other articles were there that you say you were charged for?

A. Offhand, that is all I can think of right now; that is, articles.

Q. All right. Were you working as a jigger man all of 1940?

A. No, 1940—yes.

Q. And who was your batter out?

A. I think William Alband, most of the year. • • •

Q. And how long did he continue; did he continue on over into 1941 with you?

A. That is right, up until some time prior to the first strike.

Q. About how long prior to the first strike was it?

A. There was a period there of possibly six weeks that him and I didn't work together.

Q. I see, and before he worked with you who was the batter out?

A. Before William Alband worked with me?

Q. Yes.

A. Alfred Burgess, Art Hintz.

Q. And does that cover from 1939 on, those three?

A. That probably goes back to 1938.

Q. That probably goes back to 1938, so between those three people they worked with you, and your finisher was who?

A. The last finisher was Pearl Liebzeit.

Q. And how long was she working with you?
A. Since the first strike.
Q. Well, prior to the first strike?
A. Prior to the first strike was a Goldenbogen girl, I don't know her first name.
Q. How long did she work with you as finisher?
A. Oh, five or six months, I would say; I don't know for sure.
Q. And before you had the Goldenbogen girl, who did you have?
A. Grace Vernor.
Q. Grace Vernor?
A. That is right.
Q. And how long did you have her working with you?
A. Well, she worked with me most of the time; I couldn't say off-hand; she worked with me more than any other finisher.
Q. She worked with you more than any other finisher?
A. That is right.
Q. And would that cover all the people we will say from November, 1939, down to the time of the first strike?
A. I think it would from '39, practically all of them anyway, the steady ones. • • •
Q. That is right. And regardless of when you did it?
A. That is right.
Q. Now, we discussed the mold changes this morning, and you stated, I believe, that the reason for making them so that they didn't show on the clock was in order to keep the hours down?
A. That is right. That is one reason.
Q. Yes. Well, that is the only reason you gave this morning, isn't it?
A. That is the only reason I gave so far, yes. • • •
Q. As a matter of fact, during all of those periods as you recall them now, from October, 1938 to October, 1939, according to the method of computation which the company was using, you never were over the time, were you?
A. I couldn't say, but I never aimed to go over. I generally watched my clock card.

Q. And, as a matter of fact, you were always under an hour to two or three hours?

A. Yes. I wouldn't doubt that a bit. * * *

Q. Now, this morning we discussed deductions of things that you bought; all of them, I think. Now, this deduction about grinding ware, what was that? I don't recall that we discussed that. * * *

The Master: I don't know that you definitely stated how that deduction was computed. Was it a flat rate or based on the number of pieces?

A. Well, that was based on how many girls it took to grind this ware per day, and then they took our wages and they divided it up amongst all of us and they took so much off of everybody to pay this girl.

The Master: In other words, it was taken off the wages of those men who were working on the ware that would need this grinding?

A. That is right.

The Master: Pro rata, and the amount that was taken off was the amount sufficient to pay these girls their wages?

A. That is right.

The Master: You were in effect paying for the inspection, or, pardon me, for the grinding?

A. That is right.

Q. (By Mr. Nunneley) Your rate of pay was based on what is known as straight ware, wasn't it?

A. No, it was based on per hundred dozen.

Q. But of straight ware?

A. No.

Q. What kind of ware, any kind?

A. Any kind, as long as you had a hundred dozen.

Q. If they threw them away did you get paid for them?

A. No, we had to make that up.

Q. All right, that is what I am getting at. In other words, suppose you made some ware that was so bad that it had to be thrown away, did you get paid for that?

A. None that was ever thrown away, no.

Q. Well, there was times when there were pieces thrown away, wasn't there?

A. Every day.

Q. Every day a certain amount of that that is spoiled, can't help be spoiled, that is right, isn't it?

A. That is right.

Q. And you didn't get paid for the spoiled ware, that is right?

A. No.

Q. Totally spoiled. Now, this grinding was brought about, or was a process whereby they took some defective ware and made it right, isn't that correct?

A. That is correct.

Q. Made it right. And, instead of throwing it away?

A. That is right.

Q. And the work on that was done by some girls, that is right?

A. By some girls, myself and other people along the line that loaded it into cars or kilns, saggers.

Q. You helped to do the work on the grinding?

A. No.

Q. Well, I was asking you about that. I said the work doing that grinding was done by some girls, or a girl that was employed to do it, that is right, isn't it?

A. That is right.

Q. And your amount of ware, whatever it was, your end of the percentage was taken out as her pay?

A. That is right, a certain percentage out of my pay to pay her.

Q. To pay her, and do you recall how much it was?

A. Not offhand; I have checked up on it and I have found it to be around $1.20, somewhere in that neighborhood, $1, maybe less.

Q. Per pay?

A. Per pay, maybe down to 60 or 70 cents, I don't check up every pay on that.

Q. In other words, it would vary from 50 cents to maybe a couple of dollars, is that it?

A. I don't think it ever went up to $2.00.

Q. Never went up to $2.00 a pay?

A. I would say an average of a dollar, or around a dollar.

Q. That system was in effect during all the time you worked there as a jigger man, wasn't it?

A. I couldn't say whether it was or not.

Q. During all the time you worked there as a jigger man?

A. I think probably during the time I was a jigger man.

Q. Yes, that is what I asked you about. And, what else was there that was deducted besides grinding and these things we mentioned this morning, was there anything else deducted?

A. Wheeling out molds, I don't know whether I went into that this morning or not; was that question asked this morning?

Q. Wheeling out molds, you say that was deducted?

A. That is right.

Q. From your pay. And, during what period was that done?

A. They had a man that done that once every day.

Q. Yes. What was the process of that?

A. It was old molds that we may have broken, or bad molds thrown under the bench, and he goes along and cleans them up. In other words, we used to have to carry these molds out in a pile ourself, and the company hired a man to do it and takes it out of our pay to pay it. That is the size of it.

Q. They reduced your pay that much?

A. That is right.

Q. And before that time you had to do it yourself?

A. That is back quite a number of years ago.

Q. Yes. Of course, during the time that you had to do it yourself—which way cost you more?

A. The way they are doing it now; charging, taking it out of my pay.

Q. That cost you more than it did to have somebody else do it?

A. That is right.

Q. What rate of pay would that man get that takes that out?

A. I don't know. I have asked some of the boys what they got, and I can't just call their name; around 45, 50 cents an hour, 60 maybe.

Q. Now, you were making more than that, weren't you?

A. That is right.

Q. So that if you spent some time taking these things out, you weren't earning anything, or turning out any ware in that time, were you?

A. No. But for 75 cents I could carry a lot of molds out. That is what they deducted off of us.

Q. 75 cents for over how long a period?

A. Well, the group every day one man had to pay that in the whole group as his turn came. I don't know, probably every five or six weeks.

Q. I say, how often would you have 75 cents taken out of your pay to pay that?

A. About every two or three pays. I will say every three pays.

Q. Every three pays?

A. That is right.

Q. So that instead of doing these things yourself every three pays, which would be every six weeks, you would be—you would contribute 75 cents towards somebody else that did it?

A. I didn't contribute it. They took it out of my pay and paid him; that is the size of it.

Q. You understood that was why the money was taken out of your pay, didn't you?

A. I was told they were going to do it. They didn't ask me if they could.

Q. You were told they were going to do it, and they told you why they were going to do it?

A. No.

Q. That is a job which you would—before that time you had to do every day, wasn't it? Take that stuff out?

A. No; every weekend.

Q. Every weekend?

A. That is right.

Q. So that is a weekend job that you didn't have to do when this man was put in?

A. That is right.

Q. Anyway, you understood it was coming out of your pay every week, didn't you?

A. I was told they would take it out.

Q. Yes. And you were told how long before this suit was started would you say that happened?

A. I couldn't give you now the exact date, because I don't remember exactly when they started to take these deductions. That should show on the company records.

Q. I asked you if you knew how long before.

A. I can't set no particular date on that because I don't know.

Q. You continued on working there just the same knowing that these things were to be charged on your pay, didn't you?

A. That is right.

Q. And accepted your money?

A. That is right.

Q. Right along. And did not protest?

A. Oh, I protested but it didn't do any good.

Q. To whom?

A. I never protested to anybody in particular. No foreman or—

Q. (Interposing): No foreman. None of the management of the company?

A. None of the company; that is right.

Q. You did make inquiries about your pay and things without getting fired, didn't you?

A. I have on different occasions.

Q. Yes?

A. That is right.

Q. Now, you were working on a—what they call a two-shift job?

A. I have worked both; two shifts and single. Mostly two shifts, probably.

Q. Mostly two-shift jobs in which you went to work, perhaps, early in the morning?

A. That is right.

Q. For one week, and then the next week you would start in the afternoon?

A. In the afternoons.

Q. Now, which time clock did you use? Would you get the map?

A. That was right there (indicating).

The Master: Marked "A" on the north end of the map.

Q. (By Mr. Nunneley, continuing): That is on the north side, or Church Street side?

A. That is right.

Q. And when you—after you got by the clock did you generally follow the course of this reddish line I am pointing to that goes—

A. (Interrupting): Right out around—

Q. (Interposing): Towards the center of the map, turns to the south?

A. Right out through here (indicating).

Q. Right out through there?

A. I worked probably in this line there.

The Master: Now, for the record, to get this clear on the record, the witness traced the red line down to where it turns just north of what is marked as "Toilets," and then pointed out the first row of mangles as the place where he worked.

Q. (By Mr. Nunneley) And what would be your judgment of the distance of that from your clock?

A. Why, I wouldn't have no accurate way of telling, but I would say, oh, 350 feet, 300.

Q. 350?

A. That is more or less. I couldn't say for sure.

Q. So after punching the clock, you proceeded in the direction you have indicated, some 350 feet?

A. Yes.

Q. And then what did you do next?

A. When I got to my job, my mangle?

Q. When you got to the place there.

A. Generally the first thing I did was start to get ready to go to work. Possibly, on my particular job the first thing I done was oil my jigger up.

Q. Yes.

A. And check my tools.

Q. And check your tools, what do you mean by that? See if you had the right ones?

A. No, to see if you had the right set, to see if the ware was going to be the right weight and one thing and other.

Q. Yes.

A. Then possibly if the batter-out didn't have his work did, then I would help him go get some boards, maybe go get a bucket of water for the finisher, maybe even some ware around. First we prepared to go to work, then just as soon as we got prepared for work, we started right in production work.

Q. Did you take off your coat or your shirt?

A. I generally worked with my shirt off.

Q. You generally work with your shirt off. So you took your shirt off and hung it up?

A. I generally had that off before I even hit my job. You can take that off while you are walking.

Q. You hung up the shirt, I suppose, when you got there?

A. That is right.

Q. And you put your apron on, or didn't you wear any?

A. That is right.

Q. You put your apron on. And to do all those things, what is your best judgment of how much time that would take?

A. Oh, I would say I could leave the time clock and be in there and have my apron on and ready in three minutes, easy.

Q. Easy?

A. That is right.

Q. Without hurrying?

A. Without hurrying too much.

Q. Without hurrying at all.

A. You generally hurry, though, when you are in there.

Q. Generally you hurry to get there, is that right?

A. Yes.

Q. So you could walk the 350 feet and do all those things without hurrying, in three minutes?

A. I didn't state definitely three hundred feet. I said approximately; I don't know how far I could walk, 300 or 350, how long it would take me for sure, but I would say 3 minutes.

Q. You would say 3 minutes?

A. That is right. . . .

The Master: Just list the things you did after you got there.

A. Oiled up the jigger.

Q. Yes.

A. Checked my tools.

Q. Yes.

A. Then if the batter-out had a little work to do, like getting his finisher boards or water, and if he wasn't caught up with his work, I would help him. We got that work done as fast as we could and got on production work.

Q. And those preliminary things would take about how long?

A. That depends.

The Master: How long would they average?

A. Oh, some morning you may spend five minutes, and the next morning may not be over a couple of minutes; it all depends on what you have to do, you may have to go and hunt up boards, you may be short on them.

Q. (By Mr. Nunnoley): So that those things might take anywhere from two to five minutes more?

A. That is right.

Q. And that is something that you haven't any definite knowledge on, on any day, as to how much it did take?

A. I would estimate it at about four or five minutes.

Q. I say you have no definite knowledge on any day, have you?

A. On any day?

Q. Yes.

A. Not any certain particular day, no. * * *

Q. And did you always in this thing, you couldn't do much work unless your batter-out was there, could you?

A. I couldn't do any production work unless he would be there, unless I would bat out for myself, and jigger.

Q. So if he was late or behind you, you couldn't start until after he got there?

A. I could get the job ready for him to start, and be all ready to start when he got there.

Q. And if he was ahead of you he could get the job ready, that is right, isn't it? * * *

A. That is right. * * *

The Master: Would you quit production work at sharp 2:30?

A. Most always.

The Master: Hardly ever before or after?

A. No; sometimes maybe a few minutes before. * * *

The Master: Let me ask the same question with reference to the noon hour, or the lunch hour, I don't suppose it was at noon on your shift, but the lunch time, when you went out to lunch, what time was that that you were supposed to quit?

A. 10:30.

The Master: And what did you do at 10:30?

A. Generally quit right at 10:30, or sometimes maybe a minute before. * * *

The Master: Would you have anything to do then?

A. Wash your hands and get ready to go.

The Master: Any cleaning up, or anything of that sort?

A. No, just drop the job and go. * * *

The Master: What time would you start production work when you came back from lunch?

A. Just as soon as we got in there.

The Master: Would that be before 11 o'clock?

A. Most always.

The Master: How much before?

A. Oh, I would say maybe five minutes.

The Master: So that under your testimony you generally started production work at five minutes before the hour when you came in either in the morning or coming back from lunch, but you stopped production work right on the quarter hour?

A. That is right.

The Master: Without going on five minutes beyond?

A. That is right.

Q. (By Mr. Nunneley): I show you Exhibit 34, witness, and call your attention to the first Monday that is shown on the exhibit and ask you what time you quit in the afternoon of that day, production work (handing exhibit to witness)? . . .

A. I would say 2:30. . . .

Q. (By Mr. Nunneley): And on the next day what time would you say you quit work, production work (handing exhibit to witness)?

A. I would say 2:30.

Q. And the following day?

A. I would say 2:30 every day that week. . . .

Q. I show you Exhibit 34-F, being card for January 30, 1940 (handing exhibit to witness). What time would you say you stopped production work on the first three days shown on that?

A. That would be Wednesday, Thursday, and Friday? Is that these first three?

Q. The first three days.

A. 2:30.

Q. And on the last two days shown on Exhibit 34-F?

A. These down here?

Q. Yes.

A. Two o'clock.

Q. And on the middle five days being the evening shifts shown on Exhibit 34-F, what time would you say you quit?

A. 11 o'clock.

Q. And Exhibit 34-U, being your card for September 10, 1940, what time would you say you ceased work on the first three days that are on there, production work (handing exhibit to witness)?

A. I would say the first day 2:30; the second day

probably a quarter after one; and the third day 2:30. That is production work.

Q. Yes.

A. And, possibly, this might be one o'clock we quit. I don't know.

Q. Either 1 or 1:15?

A. That would be either 1 or 1:15, that is right.

Q. And the last day shown on the card, that would be the rest of that?

A. 2:30.

Q. 2:30. And, now, if you will examine the time you stopped on the night shifts shown on Exhibit 34-U, what time would you say you ceased production work on the first three days of the night shift?

A. Which would you call the night shift here?

Q. This one there, it looks like?

A. 11 o'clock, that is right.

Q. Yes.

A. The first three days, 11 o'clock.

Q. 11 o'clock, and the last two days?

A. Ten.

Q. Exhibit 34-AA, being your card for December 3, 1940, first will you take the day shift that is on there. Can you tell from the card which ones are the day shift and which ones are the night shift?

A. Yes, I believe I can.

Q. Will you tell us during that period or that day shift, what time you ceased production work?

A. 2:30; the whole week, I believe.

Q. Yes. And on the night shift on Exhibit 34-AA, being the same card, will you tell us what time you ceased production work?

A. Monday at 11 o'clock; Tuesday at 10; Wednesday, 11; Friday, 11; Saturday, quarter to 11. That Saturday, that is as near as I can figure here.

Q. (By Mr. Nunneley): Those preliminary things that have just been spoken of, you said a few minutes ago might take anywhere from two to five minutes, isn't that right?

A. That is right; rare cases it might take longer.

Q. Rare cases it might take longer?

A. That is right.

Q. And if it happened that you got on there two or three minutes, or five minutes ahead of the time for starting production, why, you perhaps got them done before that, that is what you want us to understand?

A. Generally always there earlier than that, unless I overslept or something.

Q. And if you didn't get there, you did them afterwards, didn't you?

A. Did them when we got there; generally we were there just as soon as we could get there after 14 till, there was a line ready to punch out, ready to go in to work.

Q. Of course, it was to your advantage as well as the company's that you get started on time, wasn't it?

A. I always liked to be on time.

Q. Well, the more time you got in at production, the more you made, too, that is right, isn't it?

A. That is right. . . .

The Master: Go ahead. Were you, Mr. Larimer, ever given any instructions not to start production work until 6 o'clock sharp?

A. Never. On the other hand, they was down along the lines and if you weren't working by 6 o'clock they would raise heck with you, the foremens.

The Master: If you weren't working by six?

A. There might be an exception a morning or two, but if you made a habit of not being in there on that work, why, they wouldn't stand for it. . . .

Mr. Nunneley: We will offer, so that we may have the matter in the record, to ask this witness to examine the cards, being Exhibits 34 running up to I think it is 34-HH or 34-II, and determine whether or not during any of those weeks, according to his own method of computation, he has any overtime coming.

The Master: Well, that is the same thing that has come up before, and in order for him to do that, he would have to go through the cards and compute the elapsed time be-

tween the times indicated as having been punched in and out on the clock. It would be a matter of many hours for him to determine it. It would be a matter of his making a computation from exhibits that are already in evidence and that speak for themselves.

He has told you, and the plaintiffs have told you in their complaint what their theory is as to the work they have done. He has also amplified that in his testimony, and I won't permit you to ask those questions.

Mr. Nunneley: May we have the benefit of an exception and all the argument that has been made heretofore on that subject?

The Master: Yes.

Mr. Nunneley: Now, we will also offer to examine this witness, card by card, and to show by this plaintiff himself that he has nothing whatever coming under any theory of the case, right out of his own mouth. * * *

The Master: Well, that involves the same thing and I will make the same ruling, and you can have the benefit of the same arguments that have been made and an exception to the ruling that were stated yesterday in connection with the same question with another witness.

Mr. Nunneley: We are making these offers so as to have the benefit of them in the record.

We offer to show by cross-examination of the witness from the cards that this plaintiff has nothing whatever coming in this suit. * * *

The Master: All right; my ruling is that I am not going to permit that. * * *

The Master: Let me ask you this; you testified you did this work of changing molds, I believe it was changing molds, outside the hours shown on the time clock for a period up to November, 1939?

A. Approximately in there.

The Master: It was done outside the time clock hours, as I understand it, or the hours shown on the time clock cards only in those weeks where it appears that your hours,

as shown by the company's method of computation, might go over the legal limitation, or was it done every week?

A. Not necessarily; at this particular time there were two crews changing molds together and we helped each other. I came in early and would help him up to his quitting time, which would be 2:30, and then I would go out and punch in, and I would come in and go to work, then I would be on my regular time; he would probably punch out and come back in and help me until we were done, which would possibly be an hour and a half at the least that wouldn't show.

The Master: What I was trying to get at, what is the amount of time that it took you to do that changing that wouldn't be shown on the time clock cards?

A. Not all of it, half of it possibly.

The Master: Well, sometimes you do the entire job of changing the molds within the time shown on the time clock cards?

A. Very seldom, at that particular time.

The Master: Would you ever do the entire job outside the time shown on the time clock cards?

A. No, it was generally split up. . . .

Q. (By Mr. Nunneley, continuing) There is a certain period where you claim that you did your changing, you say, on the time that is not on the time clock cards; that is right, isn't it?

A. That is right.

Q. And, then, after that period which I believe you said beginning in November, 1939, from then on your mold changing was done in time that was on the time clock cards? . . .

A. Most always. . . .

Q. (By Mr. Nunneley, continuing) I say, I am asking you how it is that you manage to fix the time as being November, 1939, that you stopped doing this work of changing the molds on time that was not on the cards?

A. That is to the best of my judgment back that far. That is quite a ways back.

Q. Yes. Then, I take it you are not sure that it was 1939 that you stopped?

A. It may have been on up until 1940. I was just giving you the benefit of the doubt.

Q. It might have been before that, too, mightn't it?

A. I don't think so.

Q. You don't think so. Did it have any reference as to when there began to be some limitation on the hours that you did work?

A. I don't just understand that question.

Q. I say, did the fact that you stopped doing that have any connection with the time when there began to be some limitation on the number of hours you could work?

The Master: I think this has been covered pretty thoroughly.

Mr. Nunneley: Not along this line at all.

The Master: You asked the same question once before. I am quite sure you asked this morning almost the same question, as to whether it was not true that the company stopped doing this in October, 1938, when the Wage and Hour Act went into effect.

Mr. Nunneley: Well, I am going into how this witness fixes the time. I think I have a right to do it.

The Master: Did the discontinuance of this practice as far as you personally were concerned have any relation as to the coming into effect of a statutory limitation upon hours of work?

A. If I am not mistaken, somewhere around that time they had an automatic flat ware machine, it cut in production, our hours was cut, so we had plenty of time, possibly on a single job we would start to change molds ourselves.

Q. (By Mr. Nunneley) So that the only thing you are going by, then, is the fact that you had plenty of time in the legal number of hours that could be worked without payment of overtime; is that the way you are fixing it?

A. Not exactly. In other words, I was doing a lot of work for nothing, and when I would do it on time off the

card, it made my rate show a lot higher than the rate I was really making.

The Master: I think this has been gone into enough.

• • •

Q. (By Mr. Nunneley) What I was going to ask when I was interrupted was whether you tie it up to the time when you had ample hours within the legal limit within which to do it without getting over?

A. That may have something to do with it.

Q. It may have something to do with it. Witness, did you ever receive any money from the company for which you did not work?

A. Oh, I have received a couple bonuses and a couple vacation pays. I should have one coming now.

Q. And that didn't have anything to do with hours worked, did it?

A. The company, Mr. Doll has told us that the employees shared in a part of the company profits, earnings. That is the reason why we got that bonus.

Q. I say, you didn't work any hours for that, did you?

A. No.

Q. And you got that on how many occasions during the last—did you get it in 1940 twice?

A. I believe we got a bonus and a vacation in 1940.

Q. Did you get it in 1939?

A. We got a vacation.

Q. Do you know how much it was?

A. Yes, between $39 and $40. A week's pay.

Q. Each time it was between $39 and $40, is that right?

A. That is the vacation pay.

Q. As a matter of fact, what was the amount you got at the end of the year?

A. The last one was the same as my vacation pay, the last bonus check, a week's pay. I don't know about the first one. I can't remember. • • •

The Master: What was this money you were paid, how was it paid to you?

A. Well, the understanding on the bonus money, the way Mr. Doll explained it to us, that it was a part of the company earnings they returned to us, so evidently we must have worked for it.

The Master: When you say "your understanding with respect to the bonus money," who called it "bonus money"?

A. It was never called "bonus money," I don't believe; I believe it was called a share in the earnings of the company, if I am not mistaken.

The Master: Was there a notice posted on the board when you were going to receive it?

A. That is right, yes.

The Master: And how did they refer to it on the bulletin board?

A. I don't remember any more, I couldn't tell. * * *

LILLIAN SOCIA, was thereupon called as a witness on behalf of the Plaintiffs herein, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Goerlich:

Q. State your name, please.

A. Lillian Socia.

Q. And your address, please?

A. 1356 Glenwood.

Q. You are an employee of the Mt. Clemens Pottery Company?

A. Yes, I am.

Q. Will you tell us whether or not you were an employee in October, 1938?

A. Yes, I was.
Q. When was the last day that you worked at the Mt. Clemens Pottery Company?
A. The 22nd of November, 1941.
Q. 1941. And did you or did you not work continuously from October, 1938, to November, 1941?
A. I did.
Q. Will you tell us what department you worked in?
A. In the brushing and dipping department.
Q. Will you describe the nature of that department?
A. Of the brushing and dipping?
Q. Yes, the type of work performed there.
A. Well, they dip the ware in one part of the department and the other department they brush the sand off of ware to get it ready to dip.
Q. What do they dip it in?
A. In a liquid glass.
Q. And where do they obtain the ware which is dipped after it comes from the bisque?
A. From the clay shop.
Q. It comes from the clay shop?
A. Yes, and then it is fired and it comes from the bisque belt.
Q. And what was your specific job?
A. I did work on the cup machine.
Q. Will you tell us what your specific job was between October, 1938, and November, 1941?
A. Well, I worked on two different jobs during that time.
Q. Will you tell us how long at each job?
A. I worked about two and a half years on the cups, on the cup machine.
Q. With reference to October, 1938, how long did you work on the cup machine?
A. About two and a half years.
Q. From 1938, October, 1938?
A. About two years.
Q. And when did you start working on the other, — what was the other job?

A. In about the 1st of November I was put on brushing, of 1940.

Q. Prior to that time you were on the cup machine?

A. That is right.

Q. What was the nature of your duties?

A. I was a sponger and taker-off on the cup machine.

Q. On the cup machine. And the dipping, what was the nature of that?

A. That was a machine I worked on. The dippers dip the ware.

Q. What is done with the ware after you are through with it?

A. Well, after they are through dipping it, and the girls sponge it, and two other girls take it off at the end of the machine, and then it is placed in saggers and fired again, put in kilns.

Q. Do you know what happens after that?

A. Then it goes into the chipping department after it is fired.

Q. It goes to the shipping department?

A. Chipping.

Q. What do you mean by that?

A. Well, the girls chip little edges off, rough edges off the bottom of the ware.

Q. Then do you know where it goes after that?

A. Some of it goes into the decorating, to be decorated, and some of it is shipped out just plain ware.

Q. How many girls work in this department?

A. About 50 girls work in the—well, there is about 60 or 65 altogether in the brushing and dipping department.

* * *

Q. Witness, I am handing you here what has been marked for identification Plaintiff's Exhibits 35 to 35-LL. Would you look at these and tell me what they are?

A. They are my time cards. * * *

Mr. Goerlich: I offer Plaintiff's Exhibits 35 to 35-LL.

Mr. Cooper: We make the same objection to these as

to the others, if the Court please; first, as to all of them, that they are irrelevant and immaterial, being no record of hours worked, no evidence of hours worked, but only an attendance record. Secondly, we object particularly to some of them on the grounds that even on any theory, they show on their face no overtime worked.

The Master: I will make the same ruling as before and admit them into evidence.

Q. (By Mr. Goerlich) Now, will you tell us what you did when you first went to the plant in the morning, witness?

A. Yes. Came in, took my coat off and went down to the clock.

The Master: Speak out so everybody can hear you in the room.

A. And I punched the clock. Some time it was 6:31 and some time it was 6:46 we punched in.

Q. (By Mr. Goerlich) Were you told what time to punch the clock?

A. We were.

Q. Who told you?

A. The boss; the foreman of our department.

Q. What time did he tell you to punch the clock?

A. Well, some time he would tell us to punch it 15 minutes earlier, which would be 6:31, but most of the time we went in at 6:46, unless he told us to punch it earlier or later.

Q. Tell us what you did after you—

The Master: (Interposing) Just a minute, let me ask this. Who was your foreman?

A. Ernest Harms.

The Master: Ernest Harms?

A. Yes.

The Master: When did he give you these instructions?

A. He would tell us at night, the night before.

The Master: Did he do it at any particular time, or did he do it from time to time throughout the entire period?

A. Well; sometimes we would work steady for two months, punching in at 6:46. Then some mornings he would tell us to punch in at 6:31.

The Master: Then if there was a change again in the time you were to come to work, he would tell you at that time, he would tell you when to punch in?

A. Yes, he would.

Q. (By Mr. Goerlich) Now, will you tell us what you did next after you punched the time clock in the morning?

A. Then we went in and got our brush, put our finger cots on. I put my finger cots on mostly on the way going in. And put our apron on and went to work directly after we got in there.

Q. Now, when you say you went to work, tell us what the work was that you did?

A. Well, up until—when I went out on strike, I was brushing at that time, and that is what I would do, sit down and brush.

Q. Sit down and brush?

A. Yes.

Q. Tell us how much time expired between the time you punched the time clock and the time you started brushing?

A. Well, I would say about two minutes, two and a half minutes, not more than that.

Q. Did you ever observe any girls in the department coming in after the time you were told to punch the time clock?

A. Oh, yes, some of them did come in a little bit later.

Q. They did?

A. Some didn't get in there until eight minutes to seven, or even five minutes to seven sometimes. * * *

The Master: It seems like hearsay. With respect to any of these girls, did you ever hear the foreman to tell them to go home for being late?

A. Yes.

The Master: Which one?

A. Goldie Bernacki.

The Master: When did that incident occur?

A. I don't remember just when, but she was working with me at the time.

The Master: Well, about how long ago was it, a year ago or two years or three years.

A. Well, it is about two years ago.

The Master: And what happened on that occasion?

A. Why, she came in a little bit late. We had just started to work. It was before 7 o'clock, and he told her she was late and she had to go home.

Q. (By Mr. Goerlich) Did she leave then?

A. What is that?

Q. Did she leave then?

A. Yes, she did.

Q. (By Mr. Goerlich) Did you see any of the other girls leaving?

A. Yes, I did.

Q. You did see them leaving?

A. Yes.

Q. Did the foreman ever advise the employees concerning the time they should be there, or concerning the fact they would be sent home if they didn't get there at a certain time?

A. No, only that he told them—he insisted that they punch in at 6:46.

The Master: Did he tell what would happen to you if you didn't?

A. Yes.

Q. (By Mr. Goerlich) What did he say?

A. He said if they didn't get in there when the rest of them did, they would have to go home. He would have to give them a day off.

Mr. Cooper: I move that that be stricken unless the time is more definitely fixed.

The Master: When did he say that?

A. Oh, different times.

Q. (By Mr. Goerlich) While you were—

A. While I was working for him.

The Master: Within what period?

A. Oh, within the last three years.

The Master: Did he tell that to you personally, or did he tell it at a group meeting?

A. He told it at a group meeting.

The Master: Meeting of the department, or meeting of the entire plant.

A. Meeting of the department.

The Master: You say he told you that, told the group that on several occasions?

A. Yes.

The Master: Well, I think that that type of testimony, why, she has fixed it as near as she can. That is all that is required. If it were a single incident, I would try to get her to fix it more definitely.

Mr. Nunneley: I move it be stricken. The date, and time, and place, is not fixed. • • •

Q. (By Mr. Goerlich) Will you tell us whether you worked on a piece work or hourly rate?

A. Well, it weren't either. It was called gang work.

Q. Will you tell us what you mean by that?

A. Well, everybody worked together, and their pay was divided up.

Q. How many worked together? The whole department?

A. Yes, all the dipping girls and the brushing girls.

The Master: And, what was the pay of the whole department based upon?

A. How we were paid. • • •

Q. In other words, there were three classifications in this department, the dippers and the dipping girls and the brushers?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Did the dippers work the same hours as the dipping girls?

A. Yes.

Q. And the brushers?

A. Yes, they did.

Q. Every one in the department worked the same hours?

A. Yes. Sometimes the brushers were through 15 minutes early, and sometimes the dippers were through 15 minutes early.

Q. Now, can you name some of the brushers?

A. Yes, I can name a lot of the brushers.

Q. Will you name some of them for us?

SUMMARIZE FROM LINE 1, PAGE 1292, THROUGH LINE 8, PAGE 1294, AS FOLLOWS:

"Susie Crewe. Marion Setty; Loraine Jackson, Elsie Graham; Margaret Henry; Margaret Dekiere; Leona DeBussehere; Irene Miller; Wilma Redlowski; Ilene Snyder. Those include both brushers and dipping girls. Among the men dippers were Steve Anderson, Howard Bliemeister, Louis Thurman, Nelson Luchtman. That is all I can think of right now. Counsel for plaintiffs state their purpose is to get before the Court the persons who are similar to the witness. Counsel for defendant moved to strike on the grounds that giving the names of other persons in the same department is not evidence as to the hours claimed to be worked by such persons. Master rules that he does not see much relevancy but will let the list stand."

Cross Examination

By Mr. Cooper:

Q. I would like to get a little more information, Mrs. Socia, as to the nature of the operations in the brushing department. Was the ware brushed before or after it had been dipped?

A. It was brushed before it was dipped.

Q. And you used a hand-brush to brush it?

A. Yes.

Q. You sat on a stool while you were doing the brushing?

A. Yes.

Q. Did you use one kind of brush or were there various kinds of brushes that you used for various kinds of ware?

A. Just one kind of brush on the ware I brushed.

Q. Did you use the same particular brush every day?

A. Yes.

Q. And did you use the same stool every day?

A. Yes—no, not every day, somebody would take mine and I would take somebody else's; it didn't make any difference.

Q. There was a stool that you considered as your stool?

A. Yes.

Q. The one you usually used?

A. That is right.

Q. Perhaps it fitted you a little better than some of the other stools?

A. That is right.

Q. I think you said that Wilma Redlowski was in that same department?

A. Yes, she worked on cups, dipping machine.

Q. She was a dipper's helper?

A. Yes.

Q. Did a girl named Olga Denisink, did she work in that department?

A. Yes, she did.

Q. What was her job?

A. She was a cup-brusher.

Q. She was a cup-brusher; and did Lia DeKieve, work in that department?

A. Leah DeKieve, yes, she did.

Q. What was her job?

A. She was on a cup machine, dipper's assistant.

Q. She was a dipper's assistant. Then was there a girl named Leona Gottschalk; apparently that was her maiden name, the same girl known as Leona Snyder?

A. Yes, she worked in there.

Q. What division was she in?

A. I think she worked on a spraying machine. . . .

Q. As I understand it, since about November of 1940, your work has been in this brushing department?

A. That is right.

Q. And prior to that you worked, I think you said, on a cup machine?

A. That is right.

Q. Were you a dipper's helper at that time?

A. That is right.

Q. What was the nature of the work done during that prior period by you?

A. I sponged the cups and took them off.

Q. You sponged them after they had been dipped, or before?

A. After they had been dipped.

Q. Was there anything else that you had to do in connection with that job, or was that the entire operation, taking a cup after it had been dipped and sponging it off?

A. No; part of the day we would—two girls would sponge the cups after the dippers dip them, and part of the day they would take them off, placing them on boards, 7 dozen on a board.

Q. I see, after they had been sponged and a number accumulated they would be placed on a board?

A. They would have to be taken off the other end of the belt and put on the board as fast as they came down.

Q. After you sponged them?

A. After we sponged them they went through a heater and the two girls down at the other end took them off and put them on a board.

Q. And you would be doing both those things, sponging

and taking them off the belt and putting them on the board, is that right?

A. Part of the day I would sponge them and part of the day I would take them off.

Q. I see. Now, in general are the places of work of the dippers close together and the places of work of the brushers close together, or are the dippers and brushers all inter-mixed?

A. No, they are not; the dippers are—work by themselves.

Q. They work by themselves?

A. Yes, they are on one side of the department and the brushers are on the other side of the department.

Q. With reference to the time clock, which side of the department are the dippers on?

A. Well, I would say they are on the north side of the department.

Q. Would that be further from or closer to the time clocks?

A. About the same. It is just a small space in between the dippers and the brushers.

Q. Do you know where Steve Anderson worked in the department?

A. Yes, I did.

Q. Now, with reference to the time when you were a brusher, was Mr. Anderson's work stationed a little closer to or a little further from the time clock?

A. I would say a very little closer.

Q. How long have you worked for the pottery, Mrs. Socia?

A. Since June, 1937.

Q. And you worked up until November of 1940?

A. That is right. * * *

Q. I see. You had worked for this pottery at some other period?

A. Yes, I had.

Q. What was the earlier period?

A. 1915.
Q. You say 1915. How long did you work after 1915?
A. I worked there until 1919.
Q. 1915 to 1919. And, then, did you leave at that time?
A. Yes, I did.
Q. And subsequent to 1919 were there any other periods when you worked for the pottery company prior to 1937?
A. Yes, I worked there a short time in 1923.
Q. You said, I think, that you lived on Glenwood Avenue?
A. Glenwood Road.
Q. Glenwood Road. Is that in Mt. Clemens?
A. Yes, it is.
Q. About how far is it from the pottery plant?
A. About three miles.
Q. Beyond walking distance?
A. Oh, yes.
Q. How did you usually get down to the plant in the morning?
A. I rode down with another girl.
Q. What was her name?
A. Margaret Yocum.
Q. Margaret Yocum; in her car?
A. In her car.
Q. Did you ride with her practically every morning?
A. I did.
Q. What department did she work in?
A. In the dipping on cups.
Q. Did she live out in your neighborhood some place?
A. Right close by.
Q. About what time would you usually leave home in the morning?
A. 6:30.
Q. I take it you figured on getting down there a little before a quarter to 7:00?
A. Oh, yes.
Q. Did it sometimes happen that you would be want-

ing to get down there by about 14 minutes to 7:00 and she would be wanting to get down at 6:31?

A. Oh, yes.

Q. On those days I suppose you would leave a little earlier so that you would be there in plenty of time for her to go to work?

A. That is right.

Q. And if you got down there before you could punch in the time clock for your department, what would you do while you were waiting? * * *

A. Oh, I would sit out by the clock and wait until it was time.

Q. Talk to some of your friends, I presume?

A. That is right. * * *

Q. Showing you now Exhibit 30, I ask you whether you entered the plant on the north side at the point designated on this exhibit as employees' entrance (indicating)?

A. Yes, that is right.

Q. And the cloakroom that you referred to, I ask you whether that is the area marked "Cloakroom" at the extreme right-hand side of the plant?

A. At the right-hand side? It would be at the left-hand side as we came in.

Q. Yes. I think the exhibit shows that to be the witness' left-hand side.

The Master: That is right.

Q. As she came down the aisle indicated by the red arrow.

A. Yes.

Q. Then did you punch your time clock at the point indicated on the exhibit as "Time Clocks B"?

A. That is right.

Q. How many time clocks were there during the years 1938, 1939, and 1940?

A. One.

Q. One. It was some time in the spring of 1941 that a second time clock was installed?

A. I think it was then. I couldn't say just when they installed it.

Q. Then after you punched this time clock, would you indicate, please, on the exhibit, the path that you would normally follow to get over to the place where you worked in the brushing department?

A. Yes. Come up through here (indicating).

Q. I don't want to interrupt you, but to get this on the record, perhaps I can try to explain where you are pointing to, and correct me if I get it wrong. You would proceed a short distance right down an aisle just beyond the time clock?

A. Yes.

Q. Was that quite a wide aisle?

A. Yes, it was.

Q. Then you would turn to your left?

A. Yes.

Q. Through a doorway?

A. Yes.

Q. About how wide was that doorway?

A. Oh, I would say four feet or four and a half.

Q. You think the doorway was four or four and a half feet wide?

A. I think so.

Q. Then you would pass right next to a place marked "Storage"?

A. I think that is what they used it for.

Q. At least it is marked "Storage'" on the exhibit here.

A. Oh, yes.

Q. And where was it that you would make your turn after that?

A. I would come through another door and then make my turn.

Q. Would you turn at the point indicated by my pencil here, being separated from the place marked "Storage" by a place marked "Kiln"?

A. Yes.

Q. Would you go by one kiln or two kilns?

Mr. Goerlich: Go between them, wouldn't you?

A. Between them, yes.

Q. (By Mr. Cooper) As I understand, you go between; you go by the first kiln and turn to your right and proceed toward the west side of the plant?

A. Yes.

Q. Is there quite a wide aisle for you to walk in between those two kilns?

A. It was plenty wide.

Q. About how wide was it?

A. I would say three and a half, four feet.

Q. How many persons could walk in it abreast?

A. Two could walk in.

Q. If it was three and a half feet, wouldn't two abreast make it a rather tight squeeze?

A. I don't know. There is often two went in. I don't know if it was a tight squeeze or not. I guess they could just make it.

Q. Probably ordinarily they would walk through one abreast, wouldn't they?

A. Sometimes they would; sometimes they wouldn't.

Q. About how far would you proceed down this aisle between the two kilns we have just discussed?

A. Well, down to the bridge.

Q. Would that be a bridge going over the belt in the glost loading department?

A. Yes.

Q. There would be quite a few people going over that bridge at times in the morning?

A. Sometime there would and sometime there wouldn't.

Q. Would the bridge slow things up a little as you were getting through there?

A. No, it didn't slow things up. They just kept right on going.

Q. About how high was the bridge?

A. About 2 feet.

Q. So there would be steps up it?

A. Maybe three steps up and down.

Q. How wide was the bridge, about?

A. The bridge was narrow.

Q. That was not as wide as the aisleways?

A. No.

Q. Would you say people could walk two abreast on the bridge?

A. No.

Q. Only one abreast on the bridge?

A. That is right.

Q. In fact, that was no wider than necessary for one person to get through, was it?

A. They could just get through, because there was a big pipe over the top of it, and you could never go over that bridge, they would have to stoop under to get across, one person would.

Q. Even if a single person was crossing that bridge, you would have to duck your head?

A. That is right.

Q. To clear some overhead pipe as you went across it?

A. That is right.

Q. Then after you crossed the bridge, would that land you, Mrs. Socia, in the place which is about the middle of the plant here, in another aisle?

A. Yes.

Q. By the way, about how far would you say it was down this aisle between the two kilns into the bridge?

A. Oh, around 200 feet, I would think. • • •

Q. About what distance would you say that would be walking from the glost loading over along this aisle between the dipping and the chipping departments?

A. Oh, I would say about 50 feet. From the glost—oh, it wouldn't be that far. It was just about 25 feet, hardly that, I guess, from there.

Q. It was about 25 feet, you estimate, from the glost loading belt—

A. Yes.

Q. (Continuing) —to a door through which you would enter the dipping department, is that right?

A. Yes. • • •

Q. Now, as I understand it, everyone in the brushing and dipping department worked about the same hours?

A. Just about.

Q. And normally the employees in those departments would be punching in between 6:46 and 7 o'clock?

A. That is right.

Q. Were there other departments using that same time clock which customarily punched in between 6:46 and 7:00?

A. Sometimes they would.

Q. What were some of the other departments that might be coming in at that time?

A. Oh, the glost belt.

Q. Any others?

A. That is all I can think of now.

Q. The decorating room girls come in at that time?

A. No, they didn't come in the same time we did.

• • •

Q. (By Mr. Cooper) How about the glost ware room, would that sometimes come in during this interval?

A. I never noticed them.

Q. You didn't have an opportunity to observe the various employees who might be punching in at the time clock between 6:46 and 7:00 on any particular morning, is that right?

A. That is right; I didn't pay any attention to who else was going in.

Q. Or just what they were doing?

A. Only our department that I go in with them, and I didn't pay any attention just what time anybody else did go in.

Q. Now, did you testify that you overheard a foreman having a conversation with Goldie Bernacki?

A. I did.

Q. And what is the name of the foreman?

A. Ernest Harms.

Q. By the way, do you remember when he became foreman of the department?

A. I think it was July of 1940, I am not positive.

Q. What kind of work was Goldie Bernacki doing at the occasion that you overheard this conversation?

A. She was taking off cups.

Q. And what kind of work were you doing on that occasion?

A. Taking off cups.

Q. This conversation then occurred before you started in as a brusher?

A. Yes.

Q. That must have been prior to November of 1940?

A. Yes.

Q. And Ernest Harms was the foreman?

A. That is right.

Q. And would you say then that the date of this conversation was some time between July and November, 1940?

A. It must have been.

Q. It wouldn't have been any later than November, 1940?

A. No, because I wasn't working there.

Q. Do I understand that you and Miss Bernacki were both engaged as dippers' helpers on the cup machine at this time in question?

A. Yes.

Q. What time of the day did the conversation take place?

A. Just before 7 o'clock.

Q. You can't remember what kind of a day it was, how the weather was that day?

A. No, I don't.

Q. Do you happen to remember what type of cup you were making that day, the color of it, the design, or anything of that sort?

A. It could have been ivory ware. I was working on the ivory machine.

Q. And Goldie was working on the ivory machine, too?

A. Yes.

Q. Do you think that you probably were making ivory colored cups?

A. It could have been ivory or yellow. We done yellow on that machine, too.

Q. Did you change about quite frequently from one machine to another?

A. No, I didn't.

Q. During how long a period were you working at this particular machine?

A. I don't remember just how long I worked on that machine.

Q. Would you say you were working at it during the whole period between July and November, 1940?

A. No, I wouldn't. * * *

Q. Did you have any idea in trying to think back over the change-overs from one machine to another, whether it was likely in the summer or the early winter when the conversation occurred?

A. No, I wouldn't, I wouldn't remember.

Q. Let me ask you whether, when you were working on the yellow machine, there were a number of different kinds of cups that could be made on that machine? Were there different shapes of cups?

A. Yes, they could.

Q. What shape of cup were you making on the morning of this conversation?

A. I wouldn't remember.

Q. What time did you come in that morning?

A. Oh, I always came in on time. I was never sent home.

Q. You were in there 6:46 every morning?

A. I wouldn't say positive 6:46. It might have been 6:47.

Q. You think it might have been 6:50?

A. I don't know.

Q. That you punched in?

A. I don't know. I don't remember.

Q. You think it is conceivable that you might have punched in at 6:50 that particular morning?

A. I wouldn't say. I don't know. * * *

Q. Just what time of morning was it that this conversation occurred?

A. Just before 7 o'clock. I wouldn't say just how soon before 7.

Q. Did you wear a watch while you were working on this machine?

A. No, I didn't.

Q. Was there a clock up at the department?

A. Where I could see it from there.

Q. And you had arrived there, I take it, that morning before Miss Bernacki?

A. Yes.

Q. And what time did the dipper come that morning?

A. I couldn't say. I expect that he was there on time.

* * *

The Master: What did the foreman say? What were his actual words to this girl?

A. He said, "You will have to take a day off." He said, "You are late.'

And she told him she weren't late. She said it weren't 7 o'clock. He said, "You will take the day off." He said, "You come in too late." He said, "You are to be in here sooner than that."

The Master: Did you look up at the clock at that time to see it?

A. I did.

The Master: What is your best recollection of the time it was?

A. Well, it weren't 7 o'clock because the whistle hadn't blown.

The Master: How much before 7?

A. I wouldn't say. Between five minutes to 7.

The Master: Between five minutes to 7 and 7 o'clock?

A. And 7 o'clock, yes.

Q. (By Mr. Cooper) The warning whistle had blown, then, I presume?

A. I expect it had. I am not positive.

Q. You don't remember about that?

A. No.

Q. And it didn't impress you particularly, looking at the clock, just what minute the clock showed?

A. No, not just what the clock showed. I know it weren't 7 o'clock.

Q. Was it an electric clock?

A. Yes.

Q. And as I understand it, you say that Miss Bernacki replied to Mr. Harms, "It isn't 7 o'clock yet"?

A. That is right.

Q. She figured she wasn't late?

A. Yes, she did.

Q. As long as she got there in the department by 7 o'clock?

A. And ready to work at 7, she weren't late.

Q. That was your understanding, too?

A. Oh, yes.

Q. She had rung in the time clock that morning, I presume?

A. I expect she had. That is what they all done.

Q. And then she did go home?

A. Yes.

Q. Anything else you remember of the conversation?

A. No, that is all there was.

Q. And the best you can fix it for time would be between July and November, 1940, is that correct?

A. I am not positive of that, but I think that must have been about the time.

Q. Do you think it might have been in 1939?

A. It could have been, but I thought it was 1940.

Q. Your best recollection is between July and November, 1940?

A. Yes.

Q. Mrs. Socia, I would like you to look at Exhibit 35-F, the same having been identified as your time clock card for the pay period ending April 8, 1941. What time did you ring in the time clock on the first morning indicated?

A. On the first line?

Q. On the first line.

A. 6:50.

Q. What time were you supposed to ring in that morning?

A. I suppose 6:46.

Q. It would be some time after 6:50 that you actually got over to your department that morning, I presume?

A. I suppose it was.

Q. Mr. Harms was still foreman during this week?

A. That is right.

Q. Did he say anything to you about being late that morning?

A. No.

Q. Did he ever say anything to you about being late?

A. No.

Q. Now, another girl who worked in your department, if I recall this correctly, was Olga Denisuik?

A. Yes.

Q. And another one was Lia DeKiere?

A. Yes.

Q. And another one was Wilma Redlawsk?

A. Yes.

Q. And they were all supposed to come in at 6:46 that morning, were they?

A. I don't know about Wilma and Lia. It is possible they came in 7:01 or 6:31. They didn't just that time; not that I know of. * * *

Q. Showing you, Mrs. Socia, what has been marked for identification as Exhibits 36, 37 and 38, purporting to be the time clock cards for the pay ending April 8, 1941, of Wilma Redlawsk, Olga Denisuik and Lia DeKiere, let me ask you what time, according to these exhibits, these three girls came in that morning?

A. 6:50, 6:51 and 6:50.

Q. And would you say they were all supposed to punch in at 6:46 that morning?

A. That is right. * * *

Q. (By Mr. Cooper): Now, all the brushers, I think you said, went in together?

A. Mostly.

Q. That is within the limits of the period between 14 minutes to 7 and 7 o'clock, or do you mean that they would all be right next to one another in line at the time clock?

A. Some time they would and some time they wouldn't.

Q. They might be more or less interspersed with employees from the dipping department proper?

A. Well, some time they—some time there would be a line-up and some time they would just come in scattering in, as soon as they got in they would come in.

Q. They might be in with some glost belt employees?

A. They could be.

Q. Or with the chippers?

A. Possibly.

Q. You would not know then on any particular morning what time various other brushers punched in the time clock?

A. No, I wouldn't know what time they did.

Q. On this one occasion, I believe, by the way, is the only time that you can specifically recall hearing any foreman upbraid an employee for coming late?

A. That is right.

Q. Now, going back, Mrs. Socia, to Exhibit 35-E, your pay card for the period ending April 8, 1941, that is the one I showed you a minute ago and you pointed out that you came in that morning at 6:50; after you rang the time clock that morning and started over for your department, did you see any of the other brushers who were also coming into work?

A. I suppose I did, I don't remember.

Q. I suppose if you did you would say "Hello" to them?

A. Maybe.

Q. And if there was anything special you wanted to ask them about you might ask them about it?

A. I don't remember, maybe.

Q. You sometimes did, I dare say, is that correct?

A. Well, walking right along, might have been talking.

Q. And suppose that you happened to notice some-

body a little ahead of you in the line to whom you wanted to speak, perhaps you could say a word or so to them if you wanted to ask a girl about something who was a little ahead of you in the line?

A. Maybe, if I wanted to hurry up and catch up to her and ask her something.

Q. You might have wanted to speak to somebody who was behind you in the line?

A. Maybe.

Q. As a matter of fact, there was quite a bit of talk among the girls going through the time clock there, was there not?

A. No, not so much.

Q. How much of a line-up would there be at the time clock?

A. Well, sometimes there would be 40 or 50, and sometimes there would be only 10 or 15, sometimes not that many.

Q. I suppose if there were 40 or 50 lined up there would be a certain amount of conversation?

A. As they went along, I suppose.

Q. And then these different girls might be working in different departments, as they walked along through the aisleways that you have described here, is that right, and different ones would stop off at different places?

A. They would leave the line and go into their department, is that what you mean?

Q. That is right; if you happened to be in the middle of a sentence with one of the girls who worked in another department and she came to her doorway, I presume you would wait at least long enough to finish up the sentence, didn't you?

A. No, we never done that; we just hurried right in.

* * *

Q. You wouldn't even finish your sentence?

A. We weren't allowed to stand around.

Q. You never tried it, I understand from what you told me, is that right?

A. No. * * *

Proceedings of February 26, 1942.

LILLIAN SOCIA was thereupon recalled as a witness herein, and having been previously duly sworn, testified further as follows:

Cross Examination (Continued)

By Mr. Cooper:

* * *

Q. (By Mr. Cooper) Mrs. Socia, as I remember you said yesterday that you estimated it was about 200 feet down the aisle between the two kilns along the red line on Exhibit 30, where you said you walked in walking over to the brushing department, is that right?

A. Yes.

Q. Now looking at the map, if that is approximately 200 feet down that aisle, would you say that it was nearly half that distance from the time clock to the point where that aisle begins?

A. I said it was about 200 feet all the way in. * * *

Q. The whole distance then would probably be something over 200 feet?

A. It may be a little over; I never measured it, I wouldn't know exactly.

Q. Do you think it might be 500?

A. No, I don't.

Q. Do you think it was as far as a city block?

A. No, I don't.

Q. Do you think it was half as far as a city block?

A. No, not quite. * * *

Q. (By Mr. Cooper, continuing) By the way, do you know how fast you walk a mile, Mrs. Socia?

A. No, I don't.

Q. Do you know whether you can walk a mile in fifteen minutes?

A. I never timed myself.

Q. Do you think it might take you fifteen or twenty minutes, or don't you have any idea?

A. I don't have any idea.

Q. In any event, when you walked into work through the path you describe in the pottery here, did you walk in as fast as the others going in with you?

A. Yes, I did.

Q. I think you said yesterday that sometimes you punched in at the time clock with others in the dipping department?

A. That is right.

Q. If the exhibits in evidence indicate that on some days you punched in at the same time as Mr. Anderson, for example—

A. (Interrupting) Possibly I did.

Q. (Continuing) —would you say that you walked down this path to the dipping and brushing department as fast as he did?

A. Yes. Maybe a little faster.

Q. Maybe a little faster. It would take you both about the same amount of time, or perhaps you would be a little faster?

A. I expect.

Q. As I understand you changed from the cup machine over to the brushing division in November, 1940?

A. About that time.

Q. About that time. And, it was some time before that that you overheard a conversation that you described between Miss Goldie Bernacki and Mr. Harms?

A. That is right.

Q. As far as you can recall I think you told me yesterday it was between July and November of 1940?

A. That is what I said, and I said possibly it could have been 1939. I weren't positive.

Q. But your best memory was between July and November?

A. That is right.

Q. Mrs. Socia, I show you Exhibits 39-I through

39-W for identification, purporting to be the time cards of Goldie Bernacki for the weeks between June 25th, 1940, and November 26, 1940. (Handing exhibits to witness.) I wish you would look them over quickly and see whether there is any day that she punched in without being credited with hours worked. * * *

A. No, not in there.

Q. (By Mr. Cooper) Would you say, then, Mrs. Socia, that it couldn't have been between that period that this conversation occurred?

A. No, it couldn't have; I weren't positive, as I told you.

Q. You said yesterday you thought it might have been somewhat earlier than that?

A. May have been.

Q. I show you now, Mrs. Socia, Exhibits 39 through 39-K, purporting to be time clock cards of Miss Bernacki for the period from January 9, 1940, to June 11, 1940. I ask you to look those over and see whether it refreshes your recollection as to whether the instance occurred during that period. * * *

Q. (By Mr. Cooper) Would you say now, Mrs. Socia, that at any morning between January and July, 1940, Goldie Bernacki was sent home about 7 o'clock in the morning for punching in late?

A. No, not on those cards. It could have been another time. I am not positive. * * *

Q. (By Mr. Cooper) Yesterday, you fixed it as being—you were fairly sure—between July and November, 1940?

A. Fairly sure, but not positive.

Q. And you are sure now it wasn't between July and November, 1940?

A. Well, it couldn't have been, it doesn't show on the cards.

Q. And it couldn't have been any time before July, 1940, could it?

A. I don't know just when, if it is not on those cards.

The Master: I might say for the record that I checked through the last group of cards shown the witness, and find that there are cards for every two-week intervals between the dates about which the witness is questioned.

Q. (By Mr. Cooper) Do you think it might be that Miss Bernacki was sent home for some other reason than being late?

A. No, I don't.

Q. But you know that now this incident that you describe couldn't have occurred during the year 1940?

A. Not during that time, but there was a time she was sent home for being late.

Q. Have you any idea now as to when the time was?

A. Well, according to those cards, I just wouldn't remember, if it is not on there. . . .

The Master: I remember there was a change in November, 1940; was that your testimony yesterday?

A. Yes.

The Master: So could it have occurred after November, 1940?

A. No, because I never worked up there after that.

. . .

Q. Whatever it was, at least it didn't happen within a year of when you thought it happened did it?

A. It couldn't have, according to the cards. . . .

Q. This might possibly have happened back in 1937?

A. No, it didn't. It happened after Ernest Harms became boss.

Q. And he became boss, I think you said, in July, 1940?

A. I said 1940, but I would like to make a correction. I believe it was 1939 he became boss.

Q. Now you think he might have become boss in 1939?

A. Yes. I were not positive yesterday.

Q. Would you think it was probably some time in 1939 or 1940 that this occurred?

A. Yes.

Q. But you couldn't fix the date in any way between those two years?

A. No.

Q. You are satisfied it wasn't in 1940, anyhow?

A. No, it couldn't have been, according to the cards.

* * *

Q. (By Mr. Cooper) I show you, Mrs. Socia, Exhibit 39-X to 39-B, time clock cards for Goldie Bernacki for November and December, 1939 (handing exhibits to witness). * * *

Mr. Cooper: Might I suggest, or perhaps ask for a ruling from the Court, that it appears that none of the time clock cards for this period from November 14 to December 31, 1939, are missing, among those which were shown to the witness.

The Master: Well, it appears that way. * * *

Q. (By Mr. Cooper) Do you think the incident to which you refer, Mrs. Socia, might have happened on Exhibit 39-AA, when Goldie Bernacki punched in at 6:33 and didn't punch out again?

A. I don't know.

Q. You think it might have been that date?

A. I don't know.

Mr. Lamb: Hasn't she been questioned about this?

Q. (By Mr. Cooper) You don't know when it was, that day or not?

A. No.

The Master: She has been questioned, but I wondered if it couldn't have been 6:33 in the morning, is that right, could it have been 6:33?

A. No, I don't think so. * * *

Q. (By Mr. Cooper) To finish this up, Mrs. Socia, you say now that you were mistaken yesterday when you placed the time of this incident as between July and November, 1940?

A. I could have been.

Q. Well, you were, were you not?

A. Yes, according to the cards.

Q. You were mistaken in placing it between July and November, 1940, were you not?

A. Yes.

Mr. Lamb: That is as far as checking—

Mr. Cooper: (Interposing) Would you please let me finish my examination. The witness answered the question.

The Master: She answered the question.

Mr. Cooper: And counsel need not—

The Master: (Interposing) I think it is a fair question.

Q. (By Mr. Cooper) As a matter of fact, it didn't happen any time in 1940, did it?

A. Well, according to the cards I looked at, it didn't.

Q. It didn't happen any time in 1940, did it?

Mr. Lamb: She has answered the question.

A. I say no, according to the cards, I don't think it did.

Q. (By Mr. Cooper) Now, Mrs. Socia, do you say that the incident did or did not happen between January and July, 1940?

A. I couldn't say. I wouldn't remember.

Q. Is there any doubt in your mind, as a matter of fact, that it did not happen during that period?

A. I don't remember.

Q. (By Mr. Cooper) As a matter of fact, you don't remember anything happening at all, do you, Mrs. Socia?

A. I do remember she was sent home at one time after coming in just before 7 o'clock.

Q. That is all you can remember about it?

A. Yes. I don't remember the date or the year exactly.

Q. You don't remember the year it happened?

A. No.

Q. And, you don't remember whether anybody else was there or not?

A. There weren't anybody else there when she came in.

Q. You don't remember who the man was on the machine at that time?

A. No, I don't. We had a change of dippers quite often.

Q. I think you said yesterday, Mrs. Socia, that Mr. Harms gave you instructions when to punch in in the

morning, appearing on page 1280 of the transcript, that the Master asked the question:

"Just a minute, let me ask this, who was your foreman?

A. Ernest Harms.

The Master: Ernest Harms?

A. Yes.

The Master: When did he give you these instructions?

A. He would tell us at night, the night before."

That correctly reflects your testimony, does it not?

A. Yes.

Q. And you said, did you, that Mr. Harms insisted that you punch in at 6:46?

A. Yes.

Q. And you said that you always came in on time?

A. As near as I could.

Q. You said yesterday, I think, did you not, Mrs. Socia, that you always came in on time?

A. Yes.

Q. Do you still say that?

A. Yes.

Q. Mrs. Socia, I would like to show you now Exhibits 35-F, 36, 37 and 38, the same being time clock cards for the week ending April 8, 1941, of yours, Wilma Redlawski, Olga Denisuik and Leah Dekiere. Do they indicate that on that morning you punched in at 6:50?

A. Yes.

Q. And Wilma Redlawski at 6:50?

A. Yes.

Q. And Olga Denisuik at 6:51?

A. Yes.

Q. And Miss Dekiere at 6:50?

A. That is right.

Q. You said, I think that on some mornings most of the girls in the brushing department would punch in at the time clock together?

A. Yes.

Q. There was probably one such morning?

A. Could have been.

Q. A number of you punched in about the same time that morning?

A. It could have been.

Q. On the days when there was a number of you punching in the same time, there was a certain amount of a lineup at the time clock?

A. At times.

Q. There were how many in the line waiting for the time clock sometimes?

A. Oh, some time 50, sometimes 15.

Q. Sometimes 50. Do you think there were ever more than 50?

A. Yes.

Q. Sometimes more than 50?

A. I think so.

Q. As many as 100 some days?

A. No, I don't think there was—about, maybe, sometime. . . .

Q. Now, on the first date here on your time card for the week ending April 8th, when you punched in at 6:50, you then proceeded, did you, to the brushing department?

A. Yes.

Q. Do you remember whether or not you talked with any of the other girls in the department that morning?

A. I wouldn't remember.

Q. You don't remember whether you were talking with these girls with whom you punched in, or not?

A. No.

Q. Do you remember whether or not that morning the file down that aisle between the two kilns was single or double?

A. I wouldn't remember that.

Q. Well, you testified yesterday, I think, that there was sometimes a double file passing through there?

A. Some walked double and some walked single, I said.

Q. You mean that on that morning, as near as you can remember, some of the girls were walking two

abreast and others were walking single file down that aisle, is that right?

A. I wouldn't say that morning, no. I said sometimes they walked two abreast and some time they walked single.

Q. If some of them were walking two abreast that morning and you got down to that bridge you described over the glost belt, where you could only walk single file, there would be normally a slowing up as you were getting over the bridge?

A. No, no slow-up; there never was a slow-up.

Q. You say that on some mornings a number of girls would be walking down this wider aisle, three and a half or four feet wide, two abreast?

A. That is right. Some of them would and some of them would go single.

Q. And that procession, when it got to the bridge over the glost belt, would march over the glost belt?

A. Yes.

Q. And you could only walk single file over that bridge?

A. Yes.

Q. The girls, then, who were walking along double file, would have to hesitate a moment while one stepped ahead of the other and they walked single file over that bridge?

A. Well, if there was too many walking two abreast, you might have to do that, but there was never that many.

Q. It was really a bottleneck right there, wasn't it?

A. They never had to hesitate to go over the bridge.

Q. If the procession had been moving double-file, there would have been a bottleneck as they came to the single file bridge?

A. Well, if they all were, yes.

Q. Supposing half of them were?

A. They never had to hesitate at the bridge.

Q. So that the procession, you think now, was a single file procession down that aisle?

A. Not exactly; sometime two abreast and sometime single. They didn't all walk in the same.

Q. If you were talking with somebody, you might walk two abreast?

A. Maybe.

Q. To talk more easily?

A. Maybe.

Q. Then you proceeded from this bridge over the glost belt to the brushing department, did you?

A. That is right.

Q. Then this business of walking down the aisle, perhaps talking with some girls, getting over that bridge and getting over to the brushing department, that would all take a certain amount of time?

A. It wouldn't take any longer if you were talking than if you weren't talking, because you kept right a-going.

Q. It would take a certain amount of time to get there?

A. Certainly.

Q. And when you got to the brushing department, you would go and get your brush?

A. Grabbed it on the way in.

Q. Where were the brushes kept?

A. We used to keep them on our chair, and then after while we kept them in the cupboard.

Q. You kept them in a cupboard?

A. Yes.

Q. How large was that cupboard?

A. Just a very small cupboard.

Q. How many girls did you say were working in the brushing department?

A. I would say about 35.

Q. You say the cupboard was, oh, how high, 3 feet high?

A. Oh, handy to reach it; I don't know just how high it was.

Q. Was it something like a broom cupboard?

A. No, just a little cupboard tacked up on a post to keep the brushes in.

Q. Did all the girls keep their brushes in the cupboard?

A. I think they did.

Q. Would there be a foreman or watchman standing at that cupboard in the morning as the girls took out their brushes?

A. Oh, yes.

Q. As a matter of fact, only one girl could reach in at a time to get her brush, with that small cupboard?

A. No, they could all reach in, three or four reaching at once.

Q. Three or four could reach at once to get a brush?

A. Yes.

Q. Probably not more than three or four?

A. No, I don't think so. * * *

Q. (By Mr. Cooper) Going back to this morning, the first indicated on your time clock card for the pay ending April 8th, you punched in at 6:50 and then you went down this aisle. Now, can you say how long you spent going down the aisle and over to the brushing department that morning?

A. I couldn't say exactly that morning.

Q. And then you went and got your brush out of this little cupboard?

A. Yes.

Q. And after you had your brush, then did you go and get your stool?

A. My stool was always right where I left it.

Q. Unless, perhaps, some other girl had gotten there before you and gotten it, is that it?

A. That was very seldom.

Q. You don't remember whether it happened that morning, that some other girl had gotten your stool before you got there?

A. No, I wouldn't remember that.

Q. If somebody else did have your stool, I suppose you would try to get the next most comfortable stool that you could find?

A. Never looked around. Just took the next one.

Q. It didn't make any difference to you? If you couldn't get yours it did not make any difference what kind of stool you had, is that right?

A. We weren't allowed to look around. We had to take the next one that came along.

Q. As a matter of fact, isn't it true that after you got your brush you looked around there to find your stool, and if you found somebody else just taking it you would remind them that that was your stool, would you not?

A. I suppose.

Q. And after you got your stool then you had a pillow that you sat on, did you not?

A. Yes.

Q. And you would fluff that up, would you not?

A. No, we didn't take time to do that.

Q. And then you put your finger cots on—you put your finger cots or tape on, didn't you, Mrs. Socia?

A. Usually put my finger cots on on the way going in.

Q. Put your finger cots on on the way going in. How many finger cots did you use?

A. Oh, about four.

Q. Used about four finger cots—on one hand, or—

A. (Interrupting) No. On two hands.

Q. Two of them on each hand?

A. That is right.

Q. Would you take those home with you at night?

A. I did.

Q. Carry them in your pocketbook or some way?

A. That is right.

Q. And as you walked along in the morning between the time clock and the brushing department you would put your finger cots on?

A. Mostly.

Q. Sometimes you used tape instead of finger cots, didn't you?

A. Once in a while.

Q. And when you used tape you used to tape up all the fingers on both hands, didn't you?

A. No.

Q. How many fingers would you tape up when you used tape?

A. Only when I had a sore on my finger I would put a little piece of tape on.

Q. Isn't it so that before the spring of 1941 you used to tape up several fingers on both of your hands?

A. No. I used finger cots.

Q. If others there said that you ordinarily used tape instead of finger cots—

A. (Interrupting) But we didn't.

Q. (Continuing) Would you say they would be lying?

A. We weren't allowed to use tape instead of finger cots only if we had a sore finger.

Q. If you had any skin trouble you would sometimes put tape on the palms of your hands and on your wrists, would you not?

A. No. I never put it on the palms of my hand and my wrist.

Q. You are positive you never put any tape on the palms of your hands and on your wrist?

A. I might have put some on the palm of my hand if I had a sore on it from wearing out. • • •

Q. For the period going back prior to the time of the first strike now, I want to fix the period clearly in your mind, say from November, 1940, up until about April, 1941, isn't it true that you customarily used tape on your fingers?

A. No, it isn't.

Q. Did you quite frequently during that period use tape on your fingers?

A. Oh, I suppose I did once in a while.

Q. Once a week, perhaps?

A. Maybe.

Q. Maybe once a week; that would take some time to put the tape on, wouldn't it?

A. Oh, it would take a little bit of time. • • •

Q. That was adhesive tape, was it?

A. That is right.

Q. On those days you used tape you would use it just like you use the finger cots, two fingers on each hand?

A. No, I used finger cots, I didn't wrap my fingers with it.

Q. Are you positive you never put tape on your fingers during this period, April, 1940 to April, 1941?

A. I suppose I did put some on.

Q. (By Mr. Cooper) Some of the girls did use tape?

A. Yes.

Q. On all their hands, all the fingers of their hands?

A. I think there was a couple of them did do that.

Q. (By Mr. Cooper) Is this (indicating), the sort of finger cot you used, Mrs. Socia?

A. No, sir.

Q. What was yours like?

A. Black ones.

Q. Like this (indicating)?

A. That is right.

The Master: Can you pick out four of the type you would use?

Is there a thumb cot there?

A. These are (indicating).

The Master: Pick out four of the type that are nearest to the ones that you would use.

A. These are about the kind.

The Master: And see how long it takes you to put them on. All right, Mr. Cooper, she is beginning now, if you want to time this.

Mr. Cooper: Exactly 12:15 and 15 seconds.

(Witness puts on finger cots.)

Mr. Lamb: Through.

Mr. Cooper: It is exactly—

Mr. Lamb: (Interposing) 18 seconds.

Mr. Cooper: Exactly 22 seconds.

The Master: Well, we don't dispute about four seconds.

Q. (By Mr. Cooper) You were sitting down, of course, as you were putting those on now, Mrs. Socia?

A. As I was putting them on just now, yes.

Q. Walking along, you couldn't manage them quite as fast, could you?

A. Maybe not.

Q. Where did you have them, in your pocket book as you punched in at the time clock in the morning?

A. Some of the times I had them on when I punched in.

Q. On days you didn't would you pull them out of your pocketbook as you walked along? * * *

(The four finger cots above referred to were thereupon marked as Exhibit 43, by the reporter.)

The Master: Did you pick finger cots of about the type you used, or did you pick large ones so that you could put them on faster?

A. No, if I went in to buy them, I would pick them to fit right.

The Master: You were having much more difficulty with the first ones you picked than with the last ones?

A. Oh, yes.

The Master: I was just wondering the reason for that.

* * *

Q. I think you told the Master some of the girls used tape rather than finger cots?

A. That is right. I didn't. * * *

Q. These girls who used tape, did they tape up their entire finger with tape?

A. Some of them did. * * *

The Master: Put tape on in the morning, and take it off at night, and put on new tape the next day?

A. No, she would have to put on new tape by noon, because it would be all worn out.

The Master: It would just last till noon, and then she would tear that off and in the afternoon put new tape on?

A. Yes.

The Master: Would they wind it around once or wind it around a number of times? * * *

A. Yes, they would.

The Master: Go ahead.

Q. (By Mr. Cooper) Mornings when you did put tape on, would you follow, Mrs. Socia, the method that you described that these other girls used?

A. Winding it around?

Q. Winding it around?

A. Just give it one little wind around, if I had a sore on the end of my finger.

Q. (By Mr. Cooper) Now, is it not also true, going back to this morning of April 8th, Mrs. Socia, that after you got into your brushing department and got your brush and got your stool and got your pillow and had the finger cot on and had tape on, if you put tape on that morning, that you put on an apron?

A. Yes, I put an apron on.

Q. Then you would turn on your light, would you?

A. No, the light was usually on.

Q. The light was usually on; then would you be ready to sit down and begin brushing?

A. That is right.

Q. Now, on this morning on April 8th when you punched in at 6:50, can you tell me just what time it was when you completed these operations and started brushing?

A. Oh, about two minutes it took me.

Q. That is your best guess, isn't it?

A. That is right.

Q. As to how long it took?

A. That is right.

Q. It might have varied somewhat, I presume, from one day to another?

A. Very little.

Q. It would vary somewhat from one day to another?

A. Very little.

Q. And so far as setting a time for any particular day, the best that you can do would be to make an estimate based on an average?

A. Yes.

Q. Now looking again at these exhibits which I showed you a few moments ago, 35-F, 36, 37 and 38, what is the earliest that you punched in that week, Mrs. Socia?

A. 6:49.

Q. And the latest?

A. 6:50.

Q. Looking at Exhibit 36, the card of Wilma Redlawski indicates that she also punched in at 6:49 or 6:50 every day during that period?

A. That is right.

Q. And Olga Denisuik varied from 6:49 to 6:51?

A. That is right.

Q. And Lia Dekaire varied from 6:48 to 6:50?

A. That is right.

The Master: I want to ask you one question, witness. You said, when these finger cots were first given to you and you started to put them on your fingers, that you would have to have a thumb cot for your thumb, and then the whole box was given to you and you picked out four after that?

A. That is right. . . .

The Master: Are all of these what you call thumb cots?

A. That is right, because these (indicating) are kind of small for the thumb, they are hard to get used to. . . .

Q. (By Mr. Cooper) Mrs. Socia, I show you Exhibits 7, 40, 41, and 42, the time clock cards for the pay ending Oct. 29, 1940, of Lillian Socia, Lia Dekaire, Wilma Redlawski and Olga Denisuik. What time did you punch in on the first morning indicated on the time clock card?

A. 6:53.

Q. And Miss Dekaire?

A. 6:53.

Q. And Wilma Redlawski?

A. 6:53.

Q. And Olga Denisuik?

A. 6:53.

Q. And you all worked all day that day?

A. Yes.

Q. You weren't criticized for having come in too late?

A. No.

Q. Then showing you now, Mrs. Socia, Exhibit 35, your time clock card for the pay ending November 12, 1940. What is the earliest that you checked in during that two week period?

A. 6:51.

Q. And what is the latest?

A. 6:54.

Q. And you say Mr. Harms insisted that you punch in at 6:46?

A. That is right.

Q. During this period indicated by this last exhibit that I showed you, October 29, 1940, you were working as a dipper's assistant in the dipping department during that period, were you not, Mrs. Socia?

A. I may have been doing cast ware at that time.

Q. Well, I think you said that as far as you remember, it was some time in November, 1940 that you transferred from the dipping department to the brushing department?

A. That is right.

Q. During most of September and October, 1940, you were working as a dipper's assistant?

A. That is right.

Q. And as I understand it, your operation there was to sponge the cups after they had been dipped?

A. That is right.

Q. Was the purpose of that sponging to remove any excess glaze which might have adhered to a cup?

A. Yes, it was.

Q. When you were on that operation, you couldn't start sponging until the dipper was there to do some dipping, could you?

A. No.

Q. Now, you felt free, did you not, Mrs. Socia, during the time you were working as a brusher here, to leave your bench whenever you wanted to?

A. Oh, whenever we wanted to go to the dressing room or to get a drink.

Q. Or to talk with other employees?

A. Yes, at that time. * * *

Q. You would, though, during the day, on an occasion you wanted to, feel free to leave your work, did you not?

A. To talk to people?

Q. For any reason that you wanted to?

A. Oh, if we wanted to go to the dressing room, we could go.

Q. Do you recall having Mr. Harms, the foreman, direct your attention to the fact that you were spending an awful lot of time away from your bench?

A. I do not.

Q. Mr. Harding?

A. No, sir.

Q. Do you recall any supervisory employee remonstrating with you over that situation?

A. Over talking to somebody?

Q. Over spending too much time away from your bench?

A. No, I never had.

Q. Would you say that you had never been criticized for that practice?

A. No, I haven't.

Q. You haven't?

A. Not for being away from my work.

Q. Mentioning the names of Mr. Harding or Mr. Harms doesn't refresh your recollection as to any particular instance?

A. They never criticized me for being away from my work.

The Master: You mean by the way you say that that they criticized you for something else?

A. That is right.

The Master: What was that?

A. Oh, for talking to a girl one time. * * *

Q. Showing you again Exhibit 7, Mrs. Socia, directing your attention to the figures appearing in the extreme right-hand column, have you seen those figures before (handing exhibit to witness)?

A. I see them now.

Q. Have you seen them before?

A. I suppose I have.

Q. Isn't it true, as a matter of fact, that every day when you picked up your time clock card the figure for the preceding day would be written in this column?

A. That is right.

Q. On the right-hand side. And you knew what that indicated, did you not?

A. Yes.

Q. That indicated, for example, that on the first day the company computed your working hours as 7¾ hours?

A. Yes, the way the company computed it.

Q. And on the second day 8 hours?

A. That is right.

Q. And you knew how that was computed, did you not?

A. Yes, I did.

Q. And how long had you known that?

A. I knew it all the time.

Q. All the time you were working there?

A. Yes. • • •

Q. Did you ever complain to Mr. Doll, the superintendent, or the foreman, during the time you were working there that you had worked longer hours than that?

A. No. We knew better than that.

Q. You didn't complain. Now you knew, did you not, Mrs. Socia, that there was a reduction in the number of hours of work during the last three or four years? There was a time, wasn't there, when the work week was 45 hours a week?

A. Not. 45. • • •

Q. In 1938 there was a reduction to 44 hours, was there not?

A. That is right.

Q. Well, and then down to 42 hours the year after that?

A. That is right.

Q. And then down to 40 hours?

A. Yes.

Q. Now—

The Master: (Interposing) Did you ever work over time by the way the company computed your time, do you know, since the Wage and Hour Law was in effect? * * *

A. No, I didn't.

Q. (By Mr. Cooper) Were you given instructions not to work more than forty hours a week?

A. When it was forty hours.

Q. And not more than 42 hours a week when it was 42 hours?

A. That is right.

Q. And not more than 44 when the limit was 44 hours?

A. That is right. * * *

Q. Well, you don't know then as a matter of fact, whether or not there were weeks since 1938 when you worked overtime, according to the company's computation?

A. No, I don't. * * *

Q. (By Mr. Cooper) Now, during these periods, when the number of hours, as you said, were gradually cut from 44, and then to 42, and then to 40, was there a falling off in your average weekly earnings?

A. I don't remember.

Q. Do you remember whether or not your average weekly earnings in 1939 were as high or higher as they had been in 1938?

A. I wouldn't remember.

Q. Do you remember whether in 1940, you earned as much or more as you did in 1939?

A. I wouldn't remember that.

Q. Do you remember any pay increases during this period since 1938?

A. No, I don't. * * *

Q. Now, did you ever hear anything about the restitution of back wages under the Wage and Hour Law in the latter part of 1939?

A. No, I didn't.

Q. Did you know whether or not you received such a restitution in 1939?

A. I received a small check, I think, in 1939. . . .

Q. (By Mr. Cooper) How much was the check? About four or five dollars?

A. I think so. . . .

Q. Showing you Exhibit 29-D, Mrs. Socia, does that look like a carbon copy of your signature?

A. Yes, it does.

Q. This, as a matter of fact, is the paper you signed at the time you got that check for $4.76, is it not?

A. It must be. I don't know. . . .

Q. (By Mr. Cooper) Mrs. Socia, are you Secretary of Local 1083 of the United Pottery Workers of America?

A. Financial-Secretary.

Q. Financial-Secretary. What are your duties as such?

A. Oh, to take in the dues.

Q. Did you regularly attend the meetings of your Local?

A. I did.

Q. Did you as financial-secretary keep any record as to the proceedings at such meetings? . . .

A. No, I didn't; I am not the recording secretary.

Q. (By Mr. Cooper) Do you know whether such a record was kept?

A. Yes, there was.

Q. By the recording-secretary?

A. Yes.

Q. Who is the recording-secretary?

A. Right now it is Eva Freddle.

Q. How long has she been the recording-secretary, how long has Eva Freddle been recording-secretary?

A. Oh, about two months, I think.

Q. Who was the recording-secretary before that? . . .

A. I don't remember. . . .

Mr. Nunneley: We will ask at this time that at the next session they produce the minutes of the meetings of the period from 1939 on.

Q. (By Mr. Cooper) Do you remember any prior incumbent in the office of recording-secretary of the Local, going back to January, 1941?

A. Just what do you mean by that?

Q. Well, do you remember the name of anyone who during the last year has held the office of recording-secretary of the Local?

A. No, I don't.

Q. Do you attend meetings of the local quite regularly?

A. Yes, I do.

Q. Did you attend any such meeting about the time of the strike in April, 1941? * * *

A. I did.

Q. Was there a discussion at those meetings of the bringing of this suit?

Mr. Lamb: Objection. * * *

The Master: I suppose that that is a material question.

Mr. Lamb: Discussions about strikes, discussions about filing of the suit have already been submitted to other witnesses and your Honor has held that it was not material.

The Master: I don't think it came up in that form.

Mr. Nunneley: It didn't come up that way. We maintain those matters are material.

Mr. Lamb: It is no difference between a fishing expedition, a notorious anti-labor employer—

The Master: I don't know it was as to what the reputation was. Hasn't Judge Picard settled the question of authorization?

Mr. Lamb: Judge Picard has already ruled on the matter of authorization in this case. He said those people filed their designations, the designations have been filed.

Mr. Nunneley: Concerning the authorizations it is competent, and also on their question of motive of bringing in the suit.

As a matter of fact, your Honor recalled yesterday while we were here in court, counsel who was then rep-

resenting the plaintiff, made a suggestion that we settle this suit, and said, "Why don't you settle it and sign a contract with the Union?" That is why we maintain this suit is brought; the motive for the bringing of the suit.

Mr. Lamb: Is that why you are defending it so that you won't have to bargain?

The Master: Just a minute, now. This question—

Mr. Nunneley: (Interposing.) It is right in here, and counsel admitted it yesterday.

The Master: It has already been brought up, and I said if you would cite some authority on it I would go into it; and, ordinarily, I would take testimony subject to the objection if I weren't sure about the ruling, but I don't like to do it about an issue of this type unless I know where I am going, where we are getting off into somewhat collateral matters. * * *

The Master: I will take the evidence on the question of the athorization of the union to bring the suit, without ruling on whether it is admissible evidence, pursuant to Rule 43-C, I believe, or Rule 43 of the Rules of Federal Procedure. Go ahead. It will be taken subject to objection by the plaintiff, and I won't rule upon its admissibility at the present time, but will rule upon it later. * * *

Q. (By Mr. Cooper) I think you said, Mrs. Socia, that you attended a meeting of the union at about the time of the strike?

A. Yes, I attended several of them. * * *

Q. Were minutes kept at the meetings which you attended?

A. Mostly.

Q. Did you ever hear them read?

A. Yes, I have heard them read.

Q. They would be read at the beginning of each meeting, would they? That is, were the minutes of the preceding meetings read?

A. Yes, when they were read, they were read before the meetings.

Q. And would they contain a report of various resolutions that had been offered and voted upon by the membership?

A. Yes, they would.

Q. Did Local 1083 of the United Pottery Workers have an executive board?

A. Yes, they did.

Q. Were you a member of the executive board?

A. I was. I am.

Q. You are now?

A. Yes.

Q. Have you been since the first of January, 1941?

A. Yes, but we did have an acting financial secretary for a while.

Q. How long have you been a member of the executive board?

A. Since October 12, 1939.

Q. Does Local 1083 have any by-laws?

A. They do.

Q. Do you have a copy of those?

A. No, I don't.

Q. Does Local 1083 have a constitution?

A. Yes, they do.

Q. Do you have a copy of that?

A. No, I don't.

Q. Mrs. Socia, who had custody of the constitution of Local 1083?

A. I think the president.

Q. Who is the president?

A. Steve Anderson.

Q. Does he also have custody of its by-laws?

A. He does.

Q. Who has custody of the local's minutes?

A. Eva Freddle would have.

Q. She is the recording secretary?

A. That is right.

Q. Do you recall, Mrs. Socia, whether at any of these union meetings you attended, any action was taken by

the membership of the union with reference to the bringing of this suit?

A. Yes, I do.

Q. When?

A. Oh, in March or April.

Q. Of 1941?

A. Yes, I think so.

Mr. Cooper: I now move on the record, if the Court please, that plaintiff be required to produce in court tomorrow the constitution and by-laws of Local 1083, United Pottery Workers of America, and its minutes; being produced by officials of the union who can identify the same.

The Master: I think I will do this. I have been looking up the law a little bit on unincorporated associations, and their right to sue, and how they sue. I haven't got very far in it. I have never had the question come before me previously and I want to do a little research of my own on that question to feel at home in the field before I rule on that.

I will take your motion under advisement, and will not direct them to have it down here tomorrow, but if I decide that it is material, I will at some future time direct them to have it down.

Mr. Cooper: Now, if the Court please, I make the offer of proof which has been made before, and I state it in this way, because of prior discussions on it, to go through the entire period in question here with this witness, asking by detailed questions, day by day and week by week, and based on computations and other questions, to find exactly what, if any, her claim in this matter is.

I state that as an offer because at previous times we have undertaken to do the same thing with other witnesses, and have not been permitted to do so.

The Master: Well, I am glad you put it that way, because it short-cuts a lot, rather than going through the individual questions. I will hear the objection to it for the record. I assume you are objecting.

Mr. Lamb: Yes.

The Master: And I will make the same ruling that I have when it has come up before, that I am not going to permit that. The exhibits are in evidence and the computation can be made by anyone.

Mr. Cooper: Our offer is to show by this detailed examination to which I have referred, that this witness has no claim.

The Master: I understand that is its purpose, and I won't permit it to be shown that way.

Mr. Cooper: That concludes the cross examination.

The Master: Any further re-direct?

Mr. Lamb: I wonder if the Master has any questions? I understood that the defendant wanted to go into the question of the authorization of the union.

The Master: That is right.

Mr. Lamb: Does the Master have any further questions about that? The defendant has rested without asking any particular question about it.

The Master: As to the authorization of the union to sue?

Mr. Lamb: Yes.

The Master: He did ask about a meeting, and the constitution and by-laws, and he found they were possessed by somebody else.

Mr. Lamb: He didn't ask whether the meeting authorized that.

Mr. Cooper: Of course, I didn't ask that, your Honor, because the witness established that minutes were kept, which would obviously be the best evidence. * * *

CHARLES E. DOLL was thereupon produced as a witness, and, after having been first duly sworn, testified as follows:

* * *

Cross Examination

By Mr. Lamb:

Q. And is that Charles E. Doll, Senior?
A. It would be Senior, yes.
Q. Do you have a son by the name of Charles E. Doll, Junior?
A. Correct.
Q. Is he with the Mount Clemens Pottery Company, too?
A. He is.
Q. In what capacity?
A. Assistant manager.
Q. And in what capacity do you serve, Mr. Doll?
A. Vice-president and general manager.
Q. Of the Mount Clemens Pottery Company?
A. Yes.
Q. Who is the president of the Mount Clemens Pottery Company?
A. R. R. Williams.
Q. Will you tell us, Mr. Doll, how long you have been associated with the Mount Clemens Pottery Company?
A. Since 1914.
Q. How did you begin your service in 1914?
A. The Mount Clemens Pottery Company was a local organization and I was engaged by the corporation to construct and manage the original plant.
Q. Had you been in the pottery business elsewhere?
A. I had been in the pottery business practically all my life.

Q. And where had you been in the pottery business prior to your association with the Mount Clemens Pottery Company?

A. At the W. S. George Pottery Company, Palestine, Ohio; at the Cook Pottery Company, Kittanning, Pennsylvania, and the Bennett Pottery Company, Baltimore, Maryland. * * *

Q. (By Mr. Lamb) I think you said, Mr. Doll, that you had been with the Mt. Clemens Pottery Company since 1914?

A. Yes.

Q. Has the character of the product manufactured remained somewhat the same during the years?

A. We have manufactured dinner ware exclusively during the entire period.

Q. And I wonder if you would tell the Master what you mean by "dinner ware"; what products are included in that category?

A. Well, the dinner ware we manufacture is the type that you use on the tables of 135,000,000 people three times a day; it is plates, cups, saucers, fruit dishes and articles of that kind.

Q. And has that been true ever since you have been associated with the company?

A. We have always made popular lines of dinner ware. We have never made the luxury or the art items.

Q. Did you give us your home address?

A. 121 Bellevue Avenue, Mt. Clemens.

Q. Did you tell us whether or not you have any children associated with the company: Charles E. Doll, Jr., I think you said?

A. I have two sons connected with the business.

Q. What is the name of the other son?

A. J. Randolph Doll.

Q. What capacity does he have with the company?

A. He is personnel director.

Q. J. Randolph Doll is the personnel director of the Mt. Clemens Pottery Company?

A. Yes, sir.

Q. How long has he served as personnel director?

A. He has been personnel director since May, 1941.

Q. Since May, 1941, is that correct?

A. Yes.

Q. And what capacity did he serve in prior to that?

A. I believe previous to that time he had charge of certain manufacturing departments and in charge of the shipments of the company.

Q. Now, I wonder if you would tell us some of your duties as general manager and vice-president of the Mt. Clemens Pottery Company, Mr. Doll?

A. My duties, as general manager, is complete charge of the business.

Q. How many departments do you have in this business; how is this company departmentalized?

A. Oh, probably about ten to twelve departments.

Q. Could you be able to give us the names of some of them?

A. Yes, I can give them all to you if you care to, starting from one end of the plant and coming right straight through, we have the split department, the clay department, the bisque loading department—

Bisque unloading department, sagger department, brushing department.

Q. Brushing?

A. Yes. Dipping department, glost loading department—"g-l-o-s-t"—glost unloading, glost ware room, decorating department, kiln firing department, packing and shipping department.

Q. Is that the entire number of departments of the business?

A. I think I have covered them all.

Q. Do you have a bookkeeping or office department?

A. Oh, yes, office; yes.

Q. Now, who serves immediately under you?

A. Charles E. Doll, Jr.

Q. Charles E. Doll, he is a sort of associate or assistant general manager?

A. Assistant manager.

Q. And how long has he served in that capacity?

A. About fifteen years.

Q. Who is the head of the office and bookkeeping?

A. Miss Agnes Benbennick. * * *

Q. Are you familiar with the books and records of the Mt. Clemens Pottery Company?

A. I am entirely.

Q. I wonder if you would tell us, Mr. Doll, in a general way, just what books are kept and what records are kept of the wages and hours of the employees?

A. The records that are kept are the same as have been submitted for your inspection.

Q. Well, now, would you tell the Master so that the record will be a little more definite than that what these records are?

A. We have a record of attendance represented by the time cards; we have our work sheets; and the yearly earning record of the individual employees.

Q. Now, are those all the records that you have showing wages and hours of the employees?

A. They are. * * *

Q. Now, will you tell the Master something of the physical details by which these records are kept; who keeps them, where they are kept, and so forth?

A. First of all, with regard to the time cards, the time cards are daily placed in the racks at the time clocks, whence each day they are taken from the racks, brought back to the office.

Q. Will you tell us in that connection who puts them in the time clocks and who takes them out to the office?

A. One of the watchmen. * * *

They are brought into the office. The daily hours of working are computed, marked on the cards, and they are then put back into the racks being available for the next punching and for the observation of the employees as to the recorded time. At the same time those recorded hours are daily recorded on the work sheets of the individual employee.

Q. And by referring to your statement that the hours are recorded daily on the work sheet, would you indicate to the Master for instance in some—page 2, we will say, that we have in front of us now, the items that you refer to as the daily hours? * * *

The Master: The volume that has already been referred to by the witness entitled, "Payroll sheets filed for January 7, 1941, to April 1st, 1941," has been marked as Exhibit 44. It contains a great many sheets for different days, and the specific sheet being questioned about can be identified. * * *

A. As I said before, the red figures are the same as on the time card and are transferred to this sheet daily.

Q. (By Mr. Lamb) And when you refer to the red figures as being the same as on the time card, you refer to the pen or pencil notations on the side of a time card such as that which appears on Exhibit 35-HH?

A. That is correct.

Q. The name Lillian Socia, and the figure indicating 8 hours?

A. That is correct.

Q. And then those figures on the time card are carried over into red crayon marks on work sheets such as that indicated in Exhibit 44-A, is that correct?

A. That is the one I just said.

Q. Yes. And it is true, as I look at this, that a work sheet such as Exhibit 44-A contains the names of several persons at the left, and not of just one employee, isn't that correct?

A. In this case it is.

Q. Do you list these names on a work sheet by reason of a departmental relationship to each other, or just how?

A. By departments.

Q. By departments. Then do you list in these work sheets all of the persons who appear in a particular department together, so that the first part of the volume will be one department, the second part will be another department?

A. Yes. When you get to a change of departments, the people in those departments are all kept in one place, unless the employee, as is very rare, happens to work in more than one department.

Q. How will we determine, for instance, Mr. Doll, the people in the slip house department, which is the name of the first department appearing in this volume, how many sheets which we look to to determine the names or the number of the employees, for instance, in that department? How will it be indicated when that department ends?

A. By a change in heading. * * *

Q. I see. In other words, there are day rates paid in all departments, or ~~in~~ some departments, at least?

A. They are paid in some departments. * * *

Q. (By Mr. Lamb) This exhibit that has been handed here, being a map, is that as of the present time or the prior time? I see two or three time clocks marked on it; I am trying to find out about that. Is time clock "B" out there now, indicated on Exhibit 30? * * *

A. This is marked "Time clocks"; there are two there at the present time.

Q. At the place it is indicated "Time clocks," there are now two?

A. Yes.

Q. And at the place it is indicated "A." on Exhibit 30, is that time clock there now?

A. It is.

Q. Was that time clock there in 1938?

A. Yes.

Q. And at the place marked "B," on Exhibit 30, you say there are two time clocks there now; were there two time clocks there in 1938?

A. Only one.

Q. Could you tell us when the other time clock was installed at "B"?

A. Approximately March 15, 1941.

Q. Thank you. Now, Mr. Doll, you were describing

the physical matter of keeping these books, and you got to the question of taking the time clock cards to the office, and from the time clock cards the penciled or inked hours, the company's computations were made in the office, is that correct, after the watchmen picked up these cards, took them into the office; were there some computations made as to the hours worked?

A. That is right.

Q. Now, who made those computations?

A. Payroll clerks.

Q. Payroll clerks. Now, can you give me the names of one or two of the payroll clerks?

A. Yes. Take Mary Emerick, Cleo Brunniman.

Q. Any others?

A. Pansy Stewart.

Q. Now, these watchmen turned the time clock cards over to these payroll clerks that you refer to and the payroll clerks make the company's computation of the hours worked of each employee, is that right?

A. They make the entries.

Q. Now, who makes the entries in your work sheet, as indicated by Exhibit 44-A?

A. The same girls.

Q. The same girls, and these entries are made when, in the work sheets?

A. Most of them are made daily.

Q. Every day the payroll clerks enter in the time, the work sheets, the company's computation of the time worked by an employee for the preceding day?

A. That is right.

Q. Or do they do it the same day?

A. No, for the preceding day.

Q. For the preceding day. Now, on Exhibit 44-A appears a great number of other markings, and I wonder if you would advise the Master what those figures indicate?

A. These figures that you see across here represent—

Q. (Interposing) You are referring to the columns headed "Wednesday, Thursday, Friday"?

A. Yes; they refer to the production in clay dozens made on each of those days during the pay.

Q. Yes.

The Master: You are referring specifically to the figures that are written in vertically, 29,166 1/3?

Q. (By Mr. Lamb) For instance, in the first column you are referring to the figure 29,166 1/3, is that correct?

A. Yes.

Q. And that refers to the production of units by what, an employee or by a department?

A. This group of employees, in this case.

Q. The group of employees whose names appear on the first page of Exhibit 44-A?

A. Yes.

Q. And then above that appears the word "six and one-half"; what does that indicate?

A. That is a production record showing the number of scrap mills that were made on that particular day.

Q. (By Mr. Lamb) Now, what is the figure 90 which is immediately above that figure?

A. That refers to the mills of fresh material.

Q. And the figure 94?

A. The filter presses made during the day.

Q. Is that for daily production?

A. That is daily production.

Q. In other words, there is a separate sheet for these people in this department or this gang for each day of the working year, is that correct?

A. That is right.

Q. Each working day?

A. That is right.

Q. Now, coming across to the figures at the right of Exhibit 44-A, and at the top appears the pencilled note 893. Will you advise the Master what that is?

The Master: That is, opposite the word "presses" in the same column as this figure 94 you previously asked him about.

A. That is the total presses for the day.

The Master: These figures on the right-hand column are totals, then? That is, the right-hand column opposite presses, mills, scrap, and these series of vertical figures, the figure in the extreme right-hand column which are filled in, are totals of the group of figures?

A. Totals for the two weeks of pay.

Q. (By Mr. Lamb) Now, at the right under the next column under the word "rate" appears the word "65 cents per 100 dozen." Will you advise us what that means?

A. 65 cents per 100 dozen is the basic rate upon which these people in this group are settled for their pay.

Q. And then in the right column under the word "amount" appears the figure $1,637.50. Will you advise us what that indicates?

A. That is the multiple of these dozens, and the rate.

Q. So that by taking the columns, totals of these production figures, and multiplying it by the rate per 100 dozen, we get the total amount of $1,637.50, which is paid out to the employees on this sheet?

A. That is correct.

Q. Or on the entire—both sides of the sheet?

A. It would be on both sides of the sheet.

Q. Yes. Now, if this $1,637.50 was paid to the employees whose names appear on this sheet 44 A, for the two weeks period ending April 1st, 1941, will you advise the Master how that is broken down to pay various employees? How is that $1,637.50 divided up?

A. It is primarily distributed on the basis of the hours worked.

Q. Well, would you be able to explain a little more fully just what that means? How is this $1,637.50 paid out to the various employees whose names appear thereon?

A. The hours of the total group are computed together, and the production divided among the men in proportion to the hours worked. In such cases—in this particular in-

stance, except in such cases where the men have by agreement among themselves requested that where the hours are anywheres near the same on any one pay that they be given an equal split. * * *

The Master: In other words, on this Exhibit 44-A, is that pay computed according to what you call the gang piece work basis?

A. This is a group, a small group.

The Master: Group piece work basis?

A. Yes.

The Master: Where you get the production of the entire group and split it among that group?

A. This is one of those cases.

The Master: And in each case to use that method of compensating the employees, is it true that the same basic rate of pay applies to the entire group?

A. It does except in cases where through a learner or a new person being put in, the group feels that the new individual should not participate in a full share, and in this particular case here, the difference in the earnings would go to the more experienced men until such time as the individual is qualified to carry his full load. The cost to the company is exactly the same.

The Master: And in case where you have in a given department differences in skill involved, so that the basic rate of the employees is different, that is, different classes of employees, according to the basic rate of pay in a given department, then you do not use this group piece work basis, based on the entire department?

A. On the individual settlement in those cases.

The Master: I see. Just to pursue this a little further, I am trying to get this clear in my own mind as to your method of computing pay. Supposing on this Exhibit 44-A, one of the individuals, we will take Albert Miller, was a beginner, and was to receive a lower basic rate of pay, how would that be computed?

A. The customary method of doing that, your Honor, is for the first few pays, for that man to work at a stip-

ulated rate per hour, which rate per hour is deducted from the total amount of money before it is divided among the other men.

The Master: I see. Now, just one other thing and I will let Mr. Lamb resume. You stated that where you have had this group piece work method of pay, that the pay would be divided among the various members of the group either on the basis of the number of hours they worked, or else divided so that each drew the same gross rate of pay?

A. Yes, sir.

The Master: Or gross pay for the pay period?

A. That is right.

The Master: You then stated that the group themselves determined as to which method should be followed?

A. The group originally suggested the method. That isn't changed every pay. That is by agreement. It dates back quite a little ways. * * *

A. I say the agreement among the men regarding this method of settlement, dates back quite a little time. Personally, we would rather pay it on a strictly pro rated hour basis, but at the request of the men we have never changed it back that way, because every time we have suggested it, they have stated they would prefer it this way, because of the fact that it insures more of a uniform income, and where one man has a little edge in hours, one pay, the other man has it the other pay.

The Master: Well, that varies from week to week in a given department, as to how you pay the men, then? In other words, what I am trying to get at is what kind of an agreement—you say that depends upon agreement of the men. What kind of agreement do you get from them? Do they just informally tell you that they want a certain method followed rather than the other?

A. I wouldn't like you to get the idea that that is the general condition prevailing throughout the plant. You have asked me questions regarding a specific department.

The Master: I see.

A. And I am only answering with respect to that department.

The Master: Is that an unusual situation then that doesn't generally prevail?

A. It is.

The Master: And it prevails in this particular department because the men in the department ask that their pay be computed on that basis?

A. That is correct. * * *

Q. I think the Master has already asked you whether the red mark, 72-¾ indicates the hours worked in that two-week period by—is that Albert Miller or Lawrence Miller?

The Master: I don't think I asked him that.

A. I understood that we were strictly testifying—

Q. (By Mr. Lamb) May I ask you a question, whether this mark, 72-¾, indicates the hours worked by the company's computation for Albert Miller during the period ending April 1st, 1941?

A. They are the hours worked by Lawrence Miller.

Q. According to the company's computation on the time clock cards, is that correct?

A. No, I didn't say that.

Q. Will you tell—

A. I say they represent the hours worked by Lawrence Miller.

Q. Do they indicate the hours that appear on his time clock cards for the two-week period ending April 1st, 1941?

A. Not if every minute were counted.

Q. Do they indicate the company's computation on the time clock cards of the hours worked by Albert Miller for the period ending April 1, 1941?

A. They represent the company's knowledge of what he actually worked. * * *

Q. (By Mr. Lamb) I point to the figure in ink on this Exhibit 44-A, and I will ask you—possibly you can read it better than I, unless my interpretation of the word is wrong. "Tools," am I correct about that?

A. Yes.

Q. Tools, 12 cents, is that correct?

A. Yes.

Q. And I notice that 12 cents is deducted from the pay of Walter Brandt for that period ending April 1, 1941, is that correct?

(No response.)

The Master: Is that right?

A. Yes, that is correct.

Mr. Nunneley: I understand this is all being gone into just for the purpose of showing the system.

The Master: That is right. That is my understanding, at least.

Q. (By Mr. Lamb, continuing): Can you advise me whether—

Mr. Nunneley: (Interposing): If there is any other purpose to it, we want to know what it is. We would object to it. We have objected to the thing except as to the system. No claim, for instance, has been made for any of these men that they didn't get paid, or anything of that sort.

February 27, 1942

Examination of Charles E. Doll, Sr. (Continued)

Q. Will you advise us who, either individually or collectively, are responsible for the labor policies of your company?

A. I am.

Q. And are you also responsible for the method of keeping time records of the Mt. Clemens Pottery Company?

A. As General Manager I am responsible for all acts of the company.

Q. Did you, in behalf of the Mt. Clemens Pottery Company, approve or set up the method of paying employees when they report in from the succeeding quarter-hour?

Mr. Cooper: I object to the form of that. I think it is two questions; "approve or set up."

Mr. Lamb: Well, let us take them one at a time.

Q. (By Mr. Lamb, continuing) Did you set up that system?

A. I set up the system, as described to you yesterday.

Q. Yes. And you have approved the continuance of that system, have you not?

A. Definitely.

Q. You testified that in Exhibit 44-A, this one work sheet, that you had heard from a foreman that some individuals whose names appeared in that Exhibit 44-A, representing a group or gang of employees whose names appear on there, that you had individual—or that there were some kind of agreements to divide equally the money that had been paid for that job, is that correct?

A. That is right.

Mr. Cooper: Objection. * * *

The Master: I will leave that question and answer in the record, but hold that it only goes to the question of establishing a system by which the defendant pays its working men. * * *

Q. (By Mr. Lamb) Do you have a copy of any such record or agreement between an individual or group of individuals agreeing that the wages might be paid equally to the members of that group?

A. We have no written record, but the payroll records will show that the precedent of that has been in existence for many years.

Q. And as I understand it, you were not present when this foreman claims to have made any such agreement with individual employees, were you?

A. The foreman—the request was made by the group to the foreman, and in turn transmitted to me for our approval.

Q. Were you present when any such arrangement was made between employees in your company?

A. I was not, in this instance.

Q. I beg your pardon?

A. I was not, in this instance.

Q. You were not.

A. The foreman acted as intermediary in this case.

Q. Now, on Exhibit 44-A, you were testifying yesterday about deductions which appear on the pay checks of certain employees, such as Colin Pipe and Walter Brandt for tools. Can you advise us what tools that covers?

A. The term "tools" is rather used in general. In this particular instance you referred to a 12-cent deduction?

Q. Yes, a 12-cent deduction, and another deduction of 27 cents.

A. In the case of the 12-cent deduction, that covered a pair of canvas gloves.

Q. A pair of canvas gloves?

A. Yes.

Q. Will you tell us what the deduction for Colin Pipe for tools was?

Mr. Cooper: Objection, if the Court please. I do not believe Colin Pipe is claimed to be represented here.

The Master: I will overrule the objection in finding out what their system was.

Mr. Nunneley: I understand we have an objection to all of this, as far as proving their claim?

The Master: Yes, and the plaintiff has an objection to my restricting the cross-examination and not permitting it as independent proof of a new claim. So that each side can have an objection.

Go ahead.

Q. (By Mr. Lamb) I think I asked a question about what the deduction for Colin Pipe for tools was. Could you tell us what that was for?

A. That represents a pair of rubber-lined canvas gloves.

Q. You charged the employees 27 cents for a pair of rubber-lined canvas gloves and 12 cents for plain canvas gloves?

A. That is right.

Q. Do you have the invoices with you indicating the amount you paid for those canvas gloves, Mr. Doll?

A. (Producing papers): I think they were, $2.70 a dozen. * * *

(Two invoices were thereupon marked Exhibits Nos. 45 and 46 by the reporter.) * * *

A. Exhibit 45 represents an invoice showing what we paid for the canvas gloves with rubber lining. It shows that we paid for these gloves $2.70 a dozen, or 33 cents a pair—or, 23 cents a pair, I meant to say. * *

Exhibit 46 is an invoice for canvas gloves, for which we paid $1.05 a dozen, or 9 cents a pair. * * *

Q. 9 cents a pair. And that covers the 12-cent deduction for Walter Brandt, is that right?

A. That is correct.

Q. Now, the other invoice covered a pair of rubber lined gloves at how much?

A. Costing us 23 cents a pair.

Q. Costing 23 cents, and that is represented by the item deduction tools, 27 cents, under Colin Pipe, Exhibit 44-A?

A. Yes.

Mr. Cooper: If the Court please, I assume the objection we have heretofore made with reference to any deductions so-called from employees' wages continues on here?

The Master: Yes. I will make this statement; you have made a general objection to the materiality of that, and to the propriety of that type of claim under the Wage and Hour Act, and in order to avoid the necessity of your repeating that objection constantly, I will consider you have a general objection on that ground to all testimony pertaining to objections.

If you have any other objection, however, to make to questions or evidence than that general objection, you will have to make it specifically.

The Witness: Your Honor, may I add to that that

these are not our laid-down cost. This is what we pay to manufacturers. We have the freight to pay, and handling, and things of that kind, which are not shown in ordinary invoices.

The Master: How do you determine the amount that you charge or deduct the employee's pay for these items of merchandise for which he is charged?

A. We try to cover the handling and overhead expense, but we are not successful in doing that. In other words, if these things are all bought by the employees on the outside, we would be delighted to have them do it. It is simply a convenience that we run which costs us more than we get out of it.

The Master: Take the case of Exhibit 46, the canvas gloves which you paid for, at least, exclusive of freight and handling cost 9 cents a pair, and you charged the employees 12 cents a pair. Now, how did you decide on charging them 12 cents a pair?

A. The actual expense covered by freight and operation of the store actually amounts to, if you are going to come out even, you would have to add one-third.

The Master: Then, in the case of all gloves, did you make a uniform mark-up of one-third from the cost of purchase of the gloves?

A. No, we do not, as is plainly evident in this case. As markets—in the first place, invoices vary in cost, up and down, and you more or less try to stabilize your price instead of taking one every time you get in a new shipment, revising the cost, and under present conditions as they have existed for the last year and a half everything has been upward.

The Master: Now, has this 12-cent charge for that type of glove been in effect for some time?

A. Yes, it has.

The Master: How far back does that go?

A. That probably has been in effect for the last 12 months.

The Master: For the last 12 months?

A. Yes.

The Master: Do you know what the price was for canvas gloves before that?

A. This type of glove hasn't varied very much in price until quite recently.

The Master: The charge that you made to the employee, I am talking about, not the cost to you.

A. The charge to the employees has been about the same for a considerable period.

The Master: When you say "a considerable period," how long, how many years?

A. Well, that would be at least 12 months back, I would say definitely.

The Master: What can you say as to the situation within the preceding two years?

A. Well, I can hardly carry in mind the individual prices paid for these odds and ends, or the prices charged your Honor, except in stating what our principle has been with regard to the fact to actually cover the overhead cost of handling these supplies, which you would have to add at least one-third.

The Master: Well, it has been your objective all the way through in determining the amount that you are going to charge the employees for the different kinds of equipment that you handle and sell to them that you would charge them the cost price plus one-third, approximately, but not computing it each individual time?

A. That was our original standard.

The Master: Do you know in the case of the canvas gloves represented by Exhibit 46 how much the freight cost actually amounted to?

A. No, I couldn't tell you on an individual shipment.

The Master: Go ahead, Mr. Lamb.

Q. (By Mr. Lamb) Do you know whether these freight charges were prepaid? Would you like to look at the invoices? (Handing papers to the witness.) For instance, the item of freight prepaid on Exhibit 46.

A. This one so states, that is correct.

Q. I call your attention, Mr. Doll, to the fact that on Exhibit 46 you are billed for 96 dozen pair at $109.80.

A. That is right.

Q. Was that 9 cents a pair that you estimated?

A. At $1.05 a dozen.

Q. Or 9 cents a pair?

A. Yes, to make it exact it would be—

The Master: A little less than that.

Q. (By Mr. Lamb) As a matter of fact, the company paid how much for this item for which you were billed $100.80, will you advise us the amount the Mt. Clemens Pottery Company actually paid?

A. Well, the cash discount on this item happens to be 2 percent.

The Master: So the company paid that amount less 2 percent?

Q. (By Mr. Lamb) Would you tell us what you paid, $98.70?

A. $98.70 is the amount of the invoice. Cash discounts, however, do not enter into the cost of goods.

Q. (By Mr. Lamb, Interposing) Do you say that you do or do not have records of deductions from the employees' pay?

A. We have records of deductions made for each pay as the payroll is computed.

Q. You have them now, do you?

A. We don't have them now, they are not preserved.

The Master: Those records show the deductions, but not what they are for?

Mr. Lamb: We are trying to find out what it is for.

The Master: You are asking about the record showing the detail of the deductions?

Mr. Lamb: Yes.

Q. (By Mr. Lamb) How long have you kept the record after the deductions are made, Mr. Doll?

A. The individual slips come in from the storeroom, are kept until the following pay and then there is no further use for them, they are not kept any longer than that.

Q. And then do you destroy them?

A. They are destroyed.

The Master: Just what is the system when an em-

ployee wants or needs a particular item of equipment, say he gets a pair of gloves, how does he obtain them?

A. He goes to the storeroom, obtains them from the storekeeper and signs a slip for them.

The Master: What do you call those slips?

A. Simply a memorandum of the charge.

The Master: And then what is done with those slips?

A. Those slips are collected together and deducted from the following pay.

Q. (By Mr. Lamb) Mr. Doll, do you say that the employees sign a release for materials that are turned over to them individually?

A. That they withdraw from the storeroom.

Q. Do you know of any deductions from the pay of Alice Stoll for which she has not signed?

A. In the decorating department the supplies there, for the convenience of the people, in view of the fact that the department is located—

Q. (Interposing) Can you just tell us— • • •

The Master: Yes, answer the question directly: do you know of any deductions made from the pay of Alice Stoll for which she has not signed? • • •

Q. (By Mr. Lamb) You were going to say in the decorating room, were you not, that that practice was not followed that the employee signs for a deduction?

A. In the decorating department, which is located quite a distance from the storeroom, there are some small items of supplies that are kept there by the foreman and are drawn on directly from the foreman.

Q. Do you know of deductions having been made from the pay of Dorothy May in the decorating room, for which she has not signed any authorization?

A. If you will present the case and the individual pay—

Q. (Interposing) I am asking you—

A. (Continuing)—I will identify it one way or the other.

The Master: Do you know of any right offhand?

A. I could not say whether the supplies being asked

about had been withdrawn from the stockroom or whether they had been withdrawn from the supplies being kept by the foreman in that department. • • •

Mr. Lamb: Then we ask that he will have made available to us and brought here the records covering Dorothy May. • • •

The Witness: Your Honor, knowing what these records are like, there is only one way that that can be done, and that would be to determine Mrs. May's entries on here and make some notations as to where they are, and bring the books over. We cannot run the risk of getting these records all out of place, because of their vital nature, by taking sheets out of binders. We will have to depend upon the binders.

The Master: I see. You don't want these sheets abstracted?

The Witness: We cannot do it because it is too vital.

Mr. Lamb: It is perfectly agreeable with me if they make computations of it, and dates, and itemize them.

• • •

Q. Carl Pogel, for the period ending April 1, 1941. I notice under the item there of Carl Pogel evidently appears the words "day rate, 60 cents." Can you advise us what that is?

A. That is some work that he has performed other than his piece work.

Q. I see.

A. During the hours listed.

Q. Now, would—

The Master: (Interposing) That is paid for on an hourly basis?

A. Yes.

The Master: And added to the piece work pay that the employee makes?

A. That is correct.

Q. (By Mr. Lamb) Would that be down time, or waiting time, or would it be maintenance on machinery, or would you be able to tell us what kind of work that day rate was paid for?

A. I couldn't tell you what the exact work was.

Q. Would you have any records which would reveal that to us?

A. There, of course, were records at the time as to what it is. I couldn't tell you the specific thing for which it is covered.

Q. Do you have any records anywhere that would indicate what that deduction on that rate was paid for? Whether it was maintenance work, down time, repair, waiting time, or other basis on which you might have paid that employee?

A. It would represent some unusual service performed by the employee within his hours stipulated for which he was made an allowance on the day rate basis.

Q. Can you advise us whether you have any record which would indicate that unusual work that you say was done?

A. There were records at the time the entry was made.

Q. Do you have any such records now?

A. I couldn't say whether there is a specific record covering that entry or not.

Q. What kind of a record would that be attached to? What kind of a record would that be? You say you don't know whether there would be one now. Where would the record of that day rate having been paid to this employee be? What form and where would it be kept?

A. It frequently happens that when an employee performs some special duty for his foreman not directly connected with his work, that the foreman turns in an extra slip showing a credit to be allowed him for that particular operation. It would appear in this case that that is one of those instances. • • •

The Master: You had better make a note of it, Mr. Doll, while we are on the question of hourly rate, what is the system in the plant with respect to paying employees: as I understand it, practically all the employees are paid primarily upon a piece work basis?

A. 99 per cent.

The Master: Are there some employees that are paid entirely on an hourly rate basis?

A. Maintenance employees, boiler firemen, and people of that kind.

The Master: People in the office, how do they work?

A. They are salaried employees.

The Master: They are all salaried employees. Now, the 99 per cent that work on a piece work basis, many of them at times are paid on an hourly basis for a short period of time, is that right?

A. I say if there is some minor service that they do in their hours that is not directly connected with their own piece work, there is an allowance made for that particular work by agreement between themselves, and the foreman, whatever it may be. It is simply a detail of the department operation that is incidental to the entire pay roll procedure and to the work being performed by the employee.

The Master: Well, do you have established rates for the different types of miscellaneous work that the employees might do, that they will get paid for on an hourly basis?

A. We do not.

The Master: That is determined in each individual case by agreement between the foreman and the individuals?

A. It is. * * *

Q. (By Mr. Lamb) Do you pay for down time, supposing the machinery is broken down and the employees are compelled to wait in a department for an hour?

Mr. Cooper: An objection; that is a hypothetical situation. * * *

The Master: The objections are in and they are overruled.

A. Payment is not made for waiting time.

The Master: It is figured in the employees' working hours?

A. It is figured in the employees' working hours; unless it is a long break-down, which time they may go out and at some time later return to their work.

The Master: Now, how long a break-down does it have to be before they are sent out of the plant?

A. Oh, probably an hour or more.

The Master: An hour or more?

A. Yes.

The Master: If you have a break-down that looks like it is going to last an hour, the foreman will send the employees out of the plant and that will not be figured in their working time?

A. There are instances where that happens.

Q. (By Mr. Lamb, continuing) Mr. Doll, it is a fact, is it not, that you have had at least two strikes in your plant within the last—since March 1st, 1941?

A. A minority group of our employees have pulled two strikes during 1941.

Q. Now, the first strike your plant was closed for a month or so, was it not?

A. Four weeks.

Q. Four weeks. That occurred in April of 1941, right?

A. Yes.

Q. You say that strike lasted four weeks?

A. It did.

Q. And then when did the second strike occur?

A. November 24.

Q. 1941?

A. 1941.

Q. Now, the first strike and also the second strike were both called because of the company's failure to pay the employees for the time worked, isn't that correct?

A. They were not.

Q. You are aware that the company's policy is to pay employees reporting prior to 7 o'clock only from 7 o'clock, isn't that correct?

A. They are paid from the time that they start work.

Q. Do you pay them when they start work prior to 7 o'clock; do you pay them for that?

A. They don't start work prior to the starting time.

Q. Well, I am asking you; you say there are no employees who start work prior to the quarter-hour, is that your testimony?

A. Not by orders of the company.

Q. You say "orders of the company."

A. I say not by orders of the company.

Q. Do you say that the company has orders that employees shall not start prior to 7 o'clock, for instance?

A. If that happens to be the starting time.

Q. Are you able to produce any orders to that effect, any written orders to the employees?

A. I am not.

The Master: Do you have anything in writing, any written instructions to foremen with respect to starting time?

A. Those matters are covered verbally in instructions to the foremen.

The Master: Then you don't have any written instructions?

A. No.

The Master: Let me find out first, what proportion of your ware do you sell to Kresge, of the perfect ware?

A. About 50 per cent.

The Master: And where is that delivered?

A. It is shipped to the various Kresge stores located throughout the United States.

The Master: Shipped direct to the various Kresge stores throughout the United States?

A. Yes, sir.

The Master: Where does the order come from for such merchandise?

A. Sent to us from the various offices of the company, the same as they are sent to any other firms from whom they purchase.

The Master: Now, of your other customers, can you state whether most of them are out-of-state customers?

A. We have other customers outside the State of Michigan.

The Master: This 50 per cent of your ware, or approximately 50 per cent that you say you ship to other customers than Kresge, can you give a rough percentage as to how much of it is shipped outside the State, that is non-Kresge ware?

A. All of it is shipped out of the State. * * *

Q. (By Mr. Lamb, continuing) Whereabouts do you purchase, for instance, glost and your materials? Possibly we can lump that in the same classification the Master has as to percentages of your purchases which come from outside the State of Michigan?

A. Referring to our raw materials?

Q. Yes.

A. We purchase raw materials outside the State of Michigan. * * *

Q. (By Mr. Lamb) Mr. Doll, do you ever have occasion to have meetings of the employees of the Mount Clemens Pottery Company?

A. There have been times when we have had meetings.

Q. And have there been times when you have addressed such meetings?

A. Yes.

Q. Are you able to give us generally the time during the day when those meetings are held? * * *

A. These meetings were very rare, and when they have been held the general time used, generally had to be adapted to the working schedules then in effect.

Q. (By Mr. Lamb) Did you ever attend any meetings during noon hours, or luncheon recess?

A. There may have been times when departments might have been addressed at that time.

Q. "Addressed," you mean by yourself?

A. Yes.

Q. Are you able to give us an estimate of the number of times that you addressed employees by departments, or generally, at meetings in the year 1940?

(Objection overruled.) * * *

A. I would say on two occasions.

Q. (By Mr. Lamb) You think you addressed meetings on two occasions in the year 1940, is that correct?

A. Yes.

Q. Did you discuss—well, will you tell us what you discussed, if you can recall the general subjects? Then there won't be any leading question or objection.

A. I couldn't state what I discussed in 1940 with the employees.

Q. Can you recall having discussed any ways of increasing the efficiency of the employees and productivity of them?

A. Well, we undoubtedly talked of matters that were to the employees' interests.

The Master: Well, did it pertain to increasing the efficiency of the employees?

A. I would say that anything that is to their interest could increase their efficiency.

Q. (By Mr. Lamb) And is there anything that is to the interests of the Mount Clemens Pottery Company made by increasing the efficiency of the plant?

A. Our meetings were all directed at the interests of the employees.

Q. Did you ever discuss bonuses at any of these meetings?

A. We never paid a bonus.

Q. You say you have not paid a bonus?

A. We have not paid bonuses.

Q. What did you pay?

A. We paid extra compensation.

Q. I see. Did you ever post any bulletin notices, or did anyone under you ever post any bulletin notices in the Mount Clemens Pottery Company premises, advising the employees that you were going to give them a bonus?

A. There may have been, but not under the term of "bonus."

The Master: How did you refer to this compensation that was paid along around Christmas time every year?

A. Well, we referred to it as extra compensation paid to the employees out of the company earnings.

The Master: Did you refer to it as a profit-sharing arrangement, where they got back part of the profits?

A. If it was paid out of the earnings, it would have had to come out of the profits.

The Master: Well, is that the way you referred to it, as a profit-sharing arrangement, either in the bulletin or your talks to the employees?

A. Undoubtedly it was made clear to them that it was being paid because there had been some earnings. If there hadn't been earnings, it could not have been paid.

* * *

The Master: Did you give the employees every year, we will say within the last five years, a vacation with pay?

A. We gave them money that was used for, no doubt, for vacation purposes.

The Master: Wasn't that the understanding, that it was a vacation, or was it?

A. Yes.

The Master: What period—how long a vacation did the employees get?

A. There have been times when those who took it took a week.

The Master: Took a week?

A. Yes. And other times when they continued to work and were given an equivalent amount of money.

The Master: In other words, they were given the money whether they took the week off or not?

A. Yes.

The Master: In addition, if they worked that week they were paid for the work they did that week?

A. Yes, sir.

Q. (By Mr. Lamb) You had what you called a 51-52-53 plan, did you not, for vacation?

A. We did.

The Master: What is that plan? I am not very familiar with that. * * *

A. That was the intent of the plan. 51 weeks worked with 53 weeks pay. * * *

Q. (By Mr. Lamb, continuing): Mr. Doll, you were speaking of the fact that articles used by employees in this business were signed for by the employees?

A. At the stock room.

Q. Now, do you say that that is always true, that is always true?

A. Of the supplies that are kept in the stock room.

Q. What about the sponges that were deducted from the employees' pay, did they sign for those?

A. They signed for those in the stock room.

Q. Did Alice Stoll sign for sponges that she used?

A. I don't know.

Q. Would you be able to produce any receipts that employees are alleged to have signed for the acquisition of these materials that were used in their work?

A. On current payrolls.

Q. For the period 1940?

A. No. I said on a current payroll.

The Master: He says he just has them for the current payroll. He has already described them.

Q. (By Mr. Lamb, continuing) Let's get this clear. Would you have any receipts, assuming that Alice Stoll had signed for sponges, for instance, that were charged against her pay: would you have any receipts for Alice Stoll in your files?

A. We would not now.

Q. Or Dorothy May, would you have any receipts for anything that you might have charged against her payroll?

A. We would not now. They have not been working for us for quite a while.

Q. At least you don't keep such receipts for a period of more than a couple of weeks, is that right?

A. I have testified to that dozens of times already.

Q. And that is your practice of destroying the receipts after a couple of weeks?

A. Within a reasonable time.

Q. You want to say that Alice Stoll signed for sponges that were charged against her paycheck?

A. (Interrupting) If she got them from the stock room, she would sign for them.

Q. I see. And is it possible that sponges were given to her, for instance, that she didn't obtain from the stock room?

A. It would be contrary to practice if it were.

Q. Doesn't the foreman go around and sign names of employees to have these deductions made against their paychecks?

A. Not to my knowledge.

Q. I see. Have you ever issued any instructions to foremen advising them that they shall not make deductions against employees' wages, except where the employee signs for the material?

A. They are not to make deductions against the employees' wages unless they know that the supplies were furnished.

Q. I see. So if they know the supplies were furnished to particular employees, you say that they have the right to then charge that to the employees' account, is that correct?

A. They would, yes.

Q. And do you have any knowledge of foremen charging to the account of one employee for sponges, for instance, that might have been used by another employee?

A. No.

Q. Do you have any knowledge of jigger men being charged with sponges used by finishers?

A. Jigger men until some time in 1941 were always charged with the sponges used by their finishers, the same as is done in every pottery in the United States.

Q. What I am quite interested in knowing is whether that was done at the Mt. Clemens Pottery Company until 1941, you say?

A. It was.

Q. What month in 1941?

A. Up until some time in 1941.

Q. Are you able to fix the month you stopped?

A. If my memory is correct, about March.

Q. In carrying out your policy of charging to jigger men the sponges used by finishers; you don't have any policy of charging anything else to other persons' accounts, do you?

A. Charging of the sponges to the jigger men was an established custom prevailing in this pottery ever since it has been built, and, as I have said before, prevails throughout the industry and is known to the employees.

The Master: Incidentally, in connection with the first strike, do I understand the plant was closed for some period after that?

A. The plant was closed for four weeks.

The Master: Did everybody go back to work at the end of that time?

A. Everybody went back to work without discrimination.

The Master: Now, this recent strike started in November, the second strike?

A. November 24th.

The Master: That was last year?

A. Yes.

The Master: And the employees that went on strike are still on strike, they haven't come back?

A. No, quite a number of them have returned to work. The plant was not closed on this occasion. It continued to operate.

Q. (By Mr. Lamb) You don't think foreman ever signed for deductions made against the employees, is that right?

A. Not to my knowledge.

Q. I thought you said that the foreman could make such a deduction if he knew if was for the employee's use?

A. He might turn in the record of the charge.

Q. Yes.

A. But you asked whether he signed for it in the employee's name.

Q. Well, was your testimony that the foreman, if he knew that materials were being used by a particular employee, could make the deduction from that employee's pay check?

A. If the employee came to him and purchased the article from him.

Q. Well, who would sign for it in that event, when the foreman, you say, authorized such a deduction, knowing that it was for a particular employee?

A. And if I were running the department, I would have had the employee sign.

Q. Yes, I know, but what happened when your inferior officer did? Did the foreman sign, or did the employee always sign?

A. If such a thing happened, he turned in a memorandum of the employee having received the article.

The Master: Without anybody signing it?

A. There might be instances of that kind.

The Master: Might the foreman himself sign it; do you know of any such instances?

A. No, he wouldn't sign; he might turn in a memorandum to the office.

The Master: You are sure the foreman didn't sign the slips on behalf of the employees?

A. I know exactly to what counsel is referring.

The Master: Well, just answer the question; did the foreman ever sign the slips on behalf of the employees, to your knowledge?

A. No, they don't sign the slips. In the case of the decorating department, the foreman may report during the course of the pay the list of supplies that he has turned over to certain employees of the department.

The Master: Without signing?

A. Without signing, yes, sir.

Q. (By Mr. Lamb) Mr. Doll, can you advise us whether the employees were given a copy of what is marked as Exhibit 44-A or B, the payroll sheets?

A. Employees given a copy?

Q. Yes.

A. No, not of those work sheets.

Q. I see. Can you advise me whether the employee is given any indication on his payroll records of any deductions having been made for materials used?

A. I don't think that the supply deductions are shown on the stubs.

Q. Now, these stubs that are given the employees represent a voucher for a two-week period of pay, is that correct?

A. Normally, yes.

Q. Well, I wonder if you would tell us whether the employee is given any record of the amount deducted from his wage for materials used?

A. The employee knows what he has purchased.

Q. I am just asking you if the employee is given any record.

The Master: Is he given any record? Do you give the employee any statement of how his wages are computed?

A. The office records are open to the employees at all times. * * *

The Master: How does it happen that you don't furnish a statement showing the employee how many pieces he has turned out during the week and how much per piece he is entitled to receive, and what the total amount on a piece work basis he is entitled to for the work he has done for that week amounts to, and then setting up the deductions that are made from that amount?

A. Well, in the first place the piece work employees know the dozens that they have done, they keep track of that themselves then the rate being paid per dozen, and they know, consequently, the amount that they have earned. If their pay check doesn't correspond to that, they come to the office and the case is verified for them one way or the other. * * *

Q. (By Mr. Lamb) Do you have anyone who counts production?

A. No.

Q. You mean you don't have anyone who counts production?

A. Only in the finished state.

Q. What do you call those people who count production in the finished state?

A. They are not what we call our inspectors. They are simply counting for the company's final record.

Q. What do you call them?

The Master: What do you call them? Do you refer to them by a particular name?

A. In the glost ware room, where the final production is recorded by the foreman of that department—

The Master: The foreman in the glost ware department records the finished production of goods?

A. Yes.

The Master: Do you call him a counter, or do you have any particular name that you designate him by other than the foreman of the glost ware department?

A. Have him verify the count in that department.

Q. (By Mr. Lamb) When that is verified, is there a duplicate copy of that count given to the employees in that department, the glost ware department, for instance?

A I think he lets them know what the daily count is.

Q. Does he give them any duplicate copy? I think that is what we want to find out at the moment?

A. No, not officially.

The Master: My understanding was, as I recall now, in the clay shop department, you have these three different groups of people working together; the jigger man, the batter out—sometimes I heard it as ballers-out, I don't know just which is right—and finishers?

A. Yes.

The Master: And one of those three would keep a count during the day of the number of pieces turned out by the group?

A. That is correct.

The Master: Is that correct?

A. Yes, the finisher keeps the count.

The Master: The finisher keeps the count? That was my recollection.

A. That is right.

The Master: And then she turns over a slip with the total production for the day to the office and she keeps a duplicate copy herself?

A. No. She loads the ware on the standard unit trucks.

The Master: I understand.

A. And she keeps one copy; leaves the other one on the truck, and when the truck is finally accepted by the inspector, why, the ticket is then removed and the following day comes to the office.

The Master: I didn't mean she carried it over herself to the office, but I meant one record of that production during the day is on the truck, then, and it gets eventually to the office, and she keeps the other record for herself?

A. Yes.

The Master: And her pay, and the jigger man's pay, and the batter-out's pay, are based upon the production as shown by the ticket and the slip she keeps, is that right?

A. That is correct.

Q. (By Mr. Lamb) Will you advise us, Mr. Doll, first how an employee can tell from the voucher which is given him at the end of a two week period—

Mr. Nunneley: (Interposing) Mr. Lamb, will you stand over to the left a little bit?

Mr. Lamb: Yes.

Q. (By Mr. Lamb)—what deductions have been made for materials used?

A. I previously stated there is none shown on the stub.

Q. Can you advise me how an employee can tell from the voucher which is given him the hours worked by an employee that has been computed; that is, the computation which the company has made?

A. They know that from the entries on the time cards.

Q. I am not asking you to guess as to what employees might know. I am asking you to tell us from the voucher how he can determine the hours which the company has credited him with working?

A. There is nothing on the voucher to show it.

Q. (By Mr. Lamb) I see. Now, does "gross pay" mean, for instance, an employee working on a piecework rate at a fixed price per production unit, does the gross pay mean the amount that he receives indicating the pro-

duction amount times the rate per unit; is that the gross?

A. It does, less the deductions not listed hereon.

Q. I see. So gross pay to you doesn't mean the total pay which the employee earns, but the pay he receives, less deductions which are made?

Mr. Cooper: Objection.

Q. (Continuing) Such as for the purpose or acquisition of materials, such as scissors, carriers, sponges, and all the rest of the things that are deducted from his pay? I am just trying to find out what "gross pay" means.

The Master: I will give the witness a free hand in answer. * * *

A. That sounds rather misleading to me from the standpoint that when you say "the money earned"; what the employee has actually earned is the amount of money that he has earned at piecework less the expenses that he has incurred.

Q. (By Mr. Lamb) Well, what is the answer?

A. That becomes his gross pay.

Q. Does his gross pay, then, become the amount that he has received, if he is on a piecework basis, the production times the premium per unit, his total earnings, less any deductions that are made such as for these articles that we have talked about?

A. The multiple of his total production by the rate earned, less his expenses he may have paid.

Q. It is the multiple of his total production less the deductions that are made for these various materials that we have talked about, sponges—

The Master: You left out one part of your question. You said it was the multiple of the total production; the multiple times the rate, minus the deductions, is that right?

Q. (By Mr. Lamb) Is that what gross pay means on this record?

A. Yes.

Q. I see. Now, what does gross pay mean if an employee is on an hourly rate such as a maintenance em-

ployee, would that be his total hours times his hourly rate, less any deductions?

A. It would.

Q. Right?

A. Yes.

The Master: Will there be deductions for men doing maintenance work paid on an hourly basis, that is, will there be deductions for material and equipment?

A. Very rarely. * * *

Mr. Lamb: The next question is, does the company give her a computation record that she can keep her production on.

The Master: If you want to ask that you can; does the company give the employee any record on which they can keep a record of their production?

A. I don't think that is the case, except in the clay department.

Q. (By Mr. Lamb) In the decorating, or the other departments, you don't think such forms are provided, is that right?

A. No.

Q. Do you think such forms are provided in the clay department?

A. We have already testified as to the daily forms provided there.

Q. For what?

A. The employees keep a copy. I say, we have already had testimony on that.

The Master: I think perhaps you were talking with your clients back there at the time he testified to that. He was testifying in the clay department the production of ware is mounted on trucks and there is a ticket of the total production on the truck. The finisher, as I understand it, makes that record on the ticket, and also keeps a record herself, which I presume is on a company form. The truck is taken away and the ticket eventually is taken to the office and used in entering the production in these records from which the office computes the pay of the

employees. The other production record is retained by the finisher. Is that production record that is made and retained by the finisher on a company form?

A. That is.

The Master: What does she do then with that, take it home with her, or does she have a place to store it in the place where she works?

A. One member of the crew, or if they are individual workers, keep their tickets; I don't know whether they carry them in their purse or what they do with them, but they have them available if they find it necessary to make a check. * * *

The Master: Who keeps the count in the decorating department in the first instance that is used as a basis for pay?

A. The girls report at the end of the day to the foreman the work that they have performed during the day, and the entry is made on the record at that time and they have a copy of the figures that they have reported in.

The Master: In that department is the pay based upon the amount of pieces that the individual employees each turn out?

A. Yes.

The Master: Are they based on the group turn-out?

A. It is individual piecework.

The Master: And each girl keeps a record of the amount she turns out and then the foreman checks it?

A. Yes.

The Master: And they settle their arguments at that time as to who is right?

A. Yes, sir.

The Master: Then what does the foreman do, enter the amount that each girl has turned out on a form?

A. That is correct.

The Master: Does that find its way then into the office?

A. Yes, it comes to the office from him.

The Master: The production figures that the girls make then do not get directly over to the office, that is the slips upon which the girls enter the production that they have turned out?

A. Each girl is present when her production figure is entered on her individual work sheet.

The Master: The foreman has one work sheet for each girl?

A. That is correct.

Q. (By Mr. Lamb) Do you have any practice in the Mt. Clemens Pottery Company of making any 10 per cent deduction for a period of 20 weeks or 10 pays for girls who are beginning?

A. We do not.

Q. I wonder if you would advise us whether that was true in the year 1940?

A. For a period of a few months, it was a very short period; we had an apprenticeship discount applying on beginners. The exact number of weeks that was in effect I don't know offhand, but it was quite awhile ago discontinued.

Q. You say it was discontinued, when?

A. Oh, it has been a year and a half or two years ago.

Q. Well, let's get down to months and years; was it in the year 1940 discontinued, or in the year 1941?

A. It was definitely previous to 1940.

Q. Previous to 1940?

The Master: Previous to 1940?

A. I would say yes; that is, to the best of my recollection.

The Master: That would be more than two years ago, then?

Mr. Lamb: Now, let us get your statement.

A. I will be glad to get it exactly, if you want to know the date.

Q. (By Mr. Lamb, continuing) Do you say you say you weren't making deductions from the pay checks in 1940—ten per cent?

Mr. Cooper: I think, if the Court please, the witness should be given an opportunity to check the records which he has requested.

A. I won't attempt at this time to fix the time. It is a matter of record and can be ascertained.

Q. You are not able to tell us now as to whether, that

is, independent of reference to your records, whether that practice was in existence at any time in the year 1940?

A. I wouldn't say positively without looking at the records.

Q. Now, what records would you have which would indicate that?

A. Work sheets.

Q. O. K. I have here only Exhibit 44 which begins on January 7, 1941, and continues to April 1st, 1941. Would you look at the work sheets and advise us whether in that period deductions were made for the type we have asked about?

A. I can tell you without looking at it that they were not.

Q. They were not made in the year 1941?

A. That is right.

Q. Is that right?

A. That is right.

Q. All right. You say that there are no such deductions indicated in your payroll sheets for that period from January 7th, 1941, to April 1st, 1941?

A. I would say there are not; yes, sir.

Q. Now, I take it that your testimony, Mr. Doll, is that for the period of January 7th, 1941, to April 1st, 1941, the payroll sheets which will reveal the company's policy as to that deduction, that none of those payroll sheets will indicate such a deduction having been made from any of the employees; is that right?

A. Yes, sir.

Q. All right. Now, you state that for the year 1941 and—would you like to state when in 1940 you think that practice was discontinued?

A. I would say I would be glad to refer to the records and find out and let you know.

Q. All right. Would you say that it was discontinued in December, 1940?

A. I am not saying anything about it. * * *

(A group of documents were thereupon marked Exhibits 47 to 47-N, respectively, by the reporter.)

Q. (By Mr. Lamb, continuing) Will you give us the payroll sheets in Exhibit 44 for Alice Stoll? . . .

A. It looks like I am in error. . . .

Q. What do you refer to by saying you are in error?

A. In this case there is a ten per cent deduction on that account.

The Master: Wait a minute, let's get this in the record as to what he is referring to. It is the pay record of Alice Stoll for the period ending January 14, 1941.

Q. (By Mr. Lamb) And it appears thereon, does it not, Mr. Doll, that her earnings were listed in pencil, $24.14 for that two week period ending January 14, 1941?

A. Yes.

Q. There is then a deduction of $2.41, leaving a net of $21.73, is that correct?

A. That is right.

Q. Do I read that correctly?

A. Yes.

Q. Off to the right with a pencil mark connecting that, there is in red crayon, "Less 10 per cent"?

A. That is correct.

Q. Now, that 10 per cent indicates a deduction made for beginning--

A. (Interrupting) That is an apprentice discount.

Q. What is that?

A. That is an apprentice discount that I refer to. But I was wrong as to the time.

The Master: Do you have any explanation?

A. Well, I know that the thing has been discontinued, and it is my error as to the date.

The Master: You are sure it has been discontinued at the present time?

A. Yes.

Q. (By Mr. Lamb) Do you think it was discontinued in the year 1941?

A. If you will give me a minute here, we will go through and see. Will you give me that number again, please?

The Master: 1219 was the number.

A. Here is the same young lady's pay for March 25th.

Q. (By Mr. Lamb) 1941?

A. Yes.

Q. And what is your testimony with regard to that?

A. There is no deduction.

The Master: You say there is no deduction?

A. There is no deduction.

The Master: Does that indicate that the practice has been discontinued, or might that indicate the employee had passed the apprenticeship period?

A. I don't know when this employee first came with the company.

Miss Stoll: August 30, 1940.

Mr. Lamb: August 30, 1940.

A. It is a definite fact that the practice had been discontinued, and we will go back here, if you care to, a few more pays.

There is the pay of March 11th.

Q. March 11th, 1940?

A. For which there is no deduction.

Q. 1941.

A. March 11, 1941.

Q. Yes. For your information, Mr. Doll, that 20-week period was up on February 11, 1941, so it would be prior to that that the deductions were made?

A. February 25th, the same again.

Q. That is right, after February 11th. Would you look prior to February 11th, Mr. Doll?

(Witness examining book.)

A. Here it is.

Q. February 11th there is no deduction.

A. That is right.

The Master: We will take a recess at this point.

Mr. Lamb: What was the exhibit we looked at? That was January 14th, wasn't it?

The Master: January 14th, yes.

(Recess.)

Q. (By Mr. Lamb) Mr. Doll, in looking at Exhibit 44-B, under the week of January 14, 1941, for Alice Stoll:

will you tell me the number of hours that the company computed that she worked?

A. 56 hours.

Q. 56 hours?

A. Yes.

Q. Are those hours or pieces that are listed?

A. These (indicating) are hours, 56 hours for the pay.

Q. What is this item "39"?

A. "39" is the dividing of 56 into $21.73.

Q. To be the hourly rate?

A. Which gave an equivalent hourly rate of 39 cents.

Q. So you took the pay that you had given to her, the gross pay, and then took ten per cent off of it. Now can you tell us whether any other deductions were made from her pay?

A. This pay shows no other deductions.

Q. Now, in calling your attention to the other side of the sheet of this same exhibit I notice the items "add to minimum pay"; will you advise us what that indicates?

A. Here is a girl who at piece-work earned $20.93, and she worked 72 hours. In order to bring her up to the statutory minimum of 30 cents, it was necessary for the company to add 67 cents to her pay to bring it up to $21.60, which is 30 times 72 hours. • • •

The Witness (Interposing) Your Honor, there is one thing here; you asked us to check back some time ago on that ten per cent proposition.

The Master: Yes.

A. When it disappears in the case of this particular one.

Mr. Lamb: Will you speak louder?

A. When it disappears in the case of the party that has been under discussion. I find here it shows up the last time on the pay of January 14th and does not show up on the pay of January 28th.

Mr. Lamb: That is of Alice Stoll?

A. Despite the fact that the party mentioned that that apprentice period he refers to was up February 11th.

• • •

Q. (By Mr. Lamb) Are you able to advise us the

names of some other people from whom you made this 10 per cent deduction in that same department?

A. No. * * *

Q. Will you look at the pay check, or the pay for Marie Pearl or Marie Goslin, for the same week?

A. What is the week?

Q. The same week that you are looking at now, January 14, 1941?

A. Here is Marie Goslin (indicating).

Q. Was 10 per cent taken off her?

A. Yes.

Mr. Cooper: Is Marie Goslin a plaintiff?

Mr. Lamb: Yes, her married name is Marie Pearl.

Q. (By Mr. Lamb) 10 per cent was deducted from the wages of Marie Goslin, or Marie Pearl, for the period ending January 14th, 1941?

Mr. Cooper: Objection to the form of the question, if the Court please. Here again it assumes, the form of the question assumes that there was an agreement that Marie Pearl, or Marie Goslin, was to be paid a certain rate and there was a deduction. * * *

The Master: Where it says "10 per cent" I think the term "deduction" is an appropriate one, but as I understand it, it is a 10 per cent deduction from the standard rate paid other employees. * * *

I will ask the witness as to that situation.

Did you have, in a given department—in the first place I will ask was there a uniform piecework rate for all employees in a given department?

A. Your Honor, we are dealing now with the decorating department. Occasionally somebody gets off about the clay department, which is a quarter of a mile away, and piecework rates in the clay department have nothing to do with piecework rates in the decorating department.

Whatever the established rates may be in any department—

The Master: (Interposing) Let us restrict ourselves—

A. (Continuing)—that rate applies to all individuals

in that department working upon that specific article and that—

Mr. Lamb: (Interposing) Operation.

A. (Continuing)—specific pattern.

The Master: Now, in the decorating department were the—in the first place I will ask whether or not both girl and men employees worked in that department?

A. They are all women employees on piecework in the decorating department with the exception, I think, of two men liners.

The Master: Now, were these girls all doing the same type of work in the decorating department?

A. They are all doing the same type of work in principle. That is, if you mean applying decorations to ware. But, when we are applying the decorations to ware, we have a variety of different patterns which are being applied to a variety of different articles. Now, there is a piecework rate for each size plate in this specific pattern in which it is being decorated. In another pattern it may be an entirely different rate.

The Master: If you used a different sized plate, there may be a different piecework rate?

A. There is a different piecework rate with a different plate.

The Master: Suppose two girls in the department, two or more girls, are working on the same type of dinnerware and making the same pattern, will they each receive the same rate or will there be different rates for the different girls?

A. If the two girls are working on the same article in the same pattern they get the same rate except as is indicated here that in the case of a beginner that there was a 10 per cent discount. But, the rate on which it was calculated was exactly the same.

The Master: And the beginner would get the rate that the others in the department were being paid for that type of work minus 10 per cent?

A. Exactly.

The Master: That is exactly as I understood the situation, and maybe the witness is wrong and maybe I am wrong about it. If so, you can bring in other proof to contradict it, but it is no use the two of us arguing as to what the situation is outside of the testimony from the witnesses on the question. * * *

The Master: Mr. Doll, was there any printed schedule of the piecework rates that were to be paid for different types of work?

A. That is in the department.

The Master: That is in the department?

A. Yes.

The Master: Is that a bulletin furnished to each employee, or is that posted on the bulletin board in the department?

A. That is kept at the foreman's desk.

Q. (By Mr. Lamb) Are you aware of the fact, Mr. Doll, that for an hour each day of the week during the period ending January 14, 1941, Marie Goslin was compelled to and did cut patterns for which she received no compensation whatever?

Mr. Cooper: Objection. It is an argumentative question.

Mr. Lamb: I am asking if he is aware of that.

Mr. Cooper: The form of the question, asking if he is aware of a fact, when there has been no testimony whatever to such effect.

The Master: I will overrule the objection.

A. Part of the piece work operation connected with decaling which is done by all girls is to cut apart the small pieces of decalcomania to apply to their own work. That is part of their rate.

The Master: What do you mean? * * *

A. It is included in the working hours and in the piece work rate.

The Master: Is it included in the working hours computed by the company, or would she spend an hour a day on that, and not have it included?

A. It is included in the working hours computed by the company.

Q. (By Mr. Lamb) Are you aware that the girls in the decorating department had to empty their own tubs after these operations were done?

A. They formerly did empty their water from their own—used in their own work, at the end of the day's work.

Q. You say that that practice has been stopped?

A. Yes, that is no longer the fact.

Q. And when did that practice stop?

A. Some time in 1941.

The Master: Who empties the tubs now?

A. We have separate boys who take care of that now.

The Master: Now, did these girls empty these tubs on their own time, or on the company time?

A. They emptied them on the computed hours time.

Q. Are you aware of any deductions being made from the pay of employees for carriers to haul materials back from one department to another?

A. There has never been such a thing in the plant.

Q. You say—that is your testimony?

A. Yes.

Q. That carriers haven't been charged to the employees?

Mr. Nunneley: Just what do you mean by "carriers"; do you mean a piece of apparatus?

Mr. Lamb: He knows what I mean.

Mr. Nunneley: No, make it clear now to the witness; do you mean a piece of apparatus?

The Master: Do you mean by individuals or apparatus, I would like to know.

Mr. Lamb: I mean apparatus, if that question arises.

Mr. Nunneley: Let's get it clear.

The Master: Go ahead and finish your question. I didn't know myself whether you meant individuals or apparatus. I don't think you finished your question. Read the question.

(Question read.)

Q. (By Mr. Lamb) I think there is a request for a

definition of a carrier, and undoubtedly you will be able to define a carrier much better than I would, Mr. Doll. Would you like to tell us what these carriers are that carry material back and forth?

A. In operations throughout the plant there are lift trucks, there are ordinary trucks there, movable bins, and various things of that kind. * * *

Q. (By Mr. Lamb) Do you have what you call three-wheel buggies?

A. We have bins.

The Master: Do you have three-wheel buggies?

A. We have bins with three wheels on them.

Q. (By Mr. Lamb) And, what do you use those for, Mr. Doll?

A. They are used to transport a finished product around the plant.

Q. I don't think I asked you about the scissors used by the girls in the decorating department. Do the girls pay for those, or are there any deductions made from their wages for the scissors used for cutting patterns, or does the company pay for those?

A. They buy their own scissors.

Q. And does the company—has the company charged the girls or sold them any so-called scissors to the girls: made any deductions from their pay checks for scissors used in cutting patterns?

A. If they purchased the scissors they were charged for them.

Q. Well, they are compelled to purchase them some place, are they not? In other words, if they didn't purchase them from you, they would have to purchase them outside, is that it?

A. The girl in the decalcomania process would require a pair of scissors.

Q. And the company does not pay for those scissors, as I understand?

A. We do not. * * *

(A number of document were thereupon marked Exhibit 48 to 48-D, respectively, by the reporter.)

* * *

March 3, 1942

SUMMARIZE L. 1, P. 1687 THROUGH L. 14, P. 1703, AS FOLLOWS:

"Counsel for defendant renew motion to strike testimony concerning alleged deductions from pay."

The Master: I think I will do this: I think I will let Mr. Lamb proceed in putting in his case without making any ruling or restricting him, and then at the end or conclusion of the plaintiff's case, I will reconsider your motion on that point and we will have the evidence in that the plaintiff is going to submit, and I will know then as to whether or not that evidence raises a good controversial issue under the Wage and Hour Act so that I can require the defendant to meet it. I don't think it should take a great deal of time to put in his case on the question of reductions. I can see, however, where you, in meeting it, will spend a lot of time bringing down witnesses and records.

Mr. Cooper: May we have a continuing objection and a motion to strike all of the testimony?

The Master: Yes, there is a continuing objection on the record to strike all of the testimony. On the grounds you have urged. If, however, there are any specific objections on the grounds of leading questions and so forth, you will have to make that at the proper time. . . .

Q. I will hand you what is marked as Exhibit—the next number.

(A document was marked Exhibit No. 49.)

Q. And ask you if you can advise us whether or not the company has issued these instructions to the members of the decorating department, the employees of the decorating department?

A. (Witness examining exhibit).

Mr. Nunneley: May we—

The Master (Interposing): You can have the exhibit identified. If you have an objection to it, that will be made at the time of the offer.

Mr. Nunneley: We want to see it.

Mr. Cooper: Should not the exhibit be identified, if the Court please, before questions are asked about it?

The Master: He is asking the witness to identify it right now. That is the very question before the witness. He is asking whether he has issued the instructions.

A. This is a record that seems to have been issued by the foreman of the decorating department.

Q. (By Mr. Lamb) To the employees of the decorating department?

A. Decorating department.

The Master: Do you offer that in evidence?

Mr. Lamb: Yes.

(Exhibit handed to counsel for the defendants.)

* * *

The Master: You don't intend, Mr. Lamb, to offer the handwriting as part of the exhibit, do you? * * *

The Master: I will admit the mimeographed part of the Exhibit 49 in evidence, or I will admit the exhibit, with the understanding any handwriting on it is not a part of the exhibit that has been admitted.

Mr. Lamb: Unless identified at a future time.

Mr. Nunneley: We desire to object to it because it is not material to the issue. * * *

The Master: I think I will admit it in evidence without reading it through carefully. * * *

Q. (By Mr. Lamb) Do your know one of your employees by the name of Eva Freddle, Mr. Doll?

A. Yes.

Q. She sits in the courtroom here?

A. Yes.

Q. Do you recall having her called into your office and your asking her if she would drop her claim for wages and hours against the Mt. Clemens Pottery Company?

A. I remember her being called to the office, but no such statement as that was made.

Q. You didn't proposition her for the dropping of the case for wages and hours which she was prosecuting?

Mr. Nunneley: Just a minute. It wouldn't make any difference whether he talked to one of the plaintiffs or not.

Mr. Lamb: It is a declaration against interest of what he offered to give her if she would drop the suit, what he would offer to pay for in the way of overtime.

Mr. Nunneley: We object to it. Suppose he did, it is incompetent evidence.

The Master: Does it go to the question of compromise?

Mr. Lamb: It is a declaration against interest, and an admission.

The Master: I think the law is clear that any testimony pertaining to a compromise of a lawsuit pending before the court is inadmissible in evidence one way or the other. There are, I think, certain exceptions to the rule, statements of fact made during the course of a compromise may be admissible. I am not sure about that, but the compromise itself and the offer of compromise I am sure is inadmissible. If it relates to compromise, and I can't see where else it relates to: I think I will sustain the objection.

Mr. Lamb: I will make the proffer that if this witness were allowed to answer he would testify that he made a declaration against the interest of the company of which he is the president, or general manager and vice-president, rather, and that he offered to make certain payments and readjustments for overtime work by said Eva Freddle.

Mr. Nunneley: I move to strike the offer out, too. That is incompetent. Suppose he did all of that.

The Master: Counsel can make the offer to get it on the record. After having made the offer, I am more convinced than before of the correctness of my ruling, that it relates to compromise, but I will leave the statement of

proffer on the record as to what he expected to get out of the witness if I permitted him to answer the questions which I refuse to let him answer. * * *

Before taking that up, I would like to ask the witness this: You have been testifying on cross-examination to the method of your company in keeping its books and records, and particularly these computation records, a volume of which has been marked Exhibit 44. Was the system of keeping records relating to the pay of employees, and particularly to these records, an example of which is Exhibit 44, the same since October, 1938, and up to the present time?

A. Identically the same since 1932.

The Master: I see. * * *

Q. (By Mr. Lamb, continuing) Were the time clock records of the Mt. Clemens Pottery Company prior to November 1st, 1939, destroyed?

A. They have been destroyed in accordance with the office's customary practice.

The Master: Who established that practice with respect to the destruction of records?

A. That dates back so long I couldn't tell you who specifically ordered it. There are lots of incidental records that you can't continue to pile up your store rooms with, and those were one of them that we only kept a certain length of time.

The Master: How long did you keep the time clock cards?

A. Time clock cards were ordinarily kept for a period of a few months, depending upon what the storage date in the stockroom where the records are permitted. In all cases long enough so that if there was any question regarding an employee's claim it could be looked up.

The Master: I presume you have quite a problem in this plant, as undoubtedly manufacturers do, with respect to what records you will keep and what records you will destroy immediately, and how long you will keep the records before you destroy them.

A. That is correct.

The Master: Do you have any written instructions or any policy that is embodied in any written agreement as to time you will keep various types of records?

A. Not written instructions. As I say, it is largely based on common sense and the storage space available in the record room.

The Master: You say that these time clock cards were kept for a period of as long as several months?

A. Yes.

The Master: And destroyed as the space became inadequate to keep them?

A. That is correct.

The Master: Who in the Mt. Clemens Pottery Company decided,—made the final decision as to when the time clock records would be destroyed?

A. Well, I assume that some time in years gone by the Office-Manager may have asked my opinion on it.

The Master: Well, during the period from October, 1938, to November, 1939, who would have made that decision?

A. As I say, it would date back considerably. They were only destroyed at that time in line with the general procedure being followed.

The Master: I wasn't asking about who established the general procedure, but you state that the general procedure was that the records would be kept a certain length of time, and that length of time would depend largely upon the amount of time or amount of space you had in the room in which you kept all old records. Now, somebody would have to finally make a decision when it was decided that a certain group of time clock records would be taken out and destroyed. Who did that?

A. The office-manager, Miss Benbennick, at intervals, as the surplus or what we considered superfluous records, ordered them cleared out of the storage room.

The Master: Of these other two types of records, relating to payroll of the employees, were those destroyed also before November, 1939, or do you have all of those?

Mr. Cooper: Is your Honor addressing that question to me? • • •

The Master (Interposing): That Exhibit 44, records of that type you have back to at least 1938, don't you?

Mr. Cooper: Yes, your Honor.

The Witness: Back to 1934.

The Master: Complete?

Mr. Cooper: Yes.

The Master: And the third type of record, I have forgotten what you call it, those cards on which computations are made.

A. The yearly earning cards.

The Master: The yearly earning cards.

A. Yes.

The Master: How far back do you have those records?

A. Those were available ever since we started, that type of record.

The Master: Go ahead, Mr. Lamb.

Q. (By Mr. Lamb) Do I understand that the destruction of those time clock records occurred in November, 1939?

A. That occurred, based upon what I know of their usual procedure there, it would have been cleared out some time in 1940.

Q. You are not able to tell us when they were destroyed in 1940?

A. No, there is no record kept of it.

Q. What is the usual procedure? That they be kept for a particular length of time, or what is that length of time?

A. As I previously stated, they are kept long enough so that they are available for any question that might come up regarding these sheets, and then they are cleaned up as storage space requires.

Q. Do you have any policy? I thought you said you had a policy that the usual rule was that you kept them a certain length of time. We are trying to find out what your policy is, or what the length of time is that you keep them.

A. We have no designated period. We had no designated period at that time.

Q. So, you don't have any definite policy as to the length of time when these records shall be kept?

A. You asked about time cards?

Q. Yes.

A. That is correct.

Q. Do you know whether that had anything to do with the Wage and Hour Division's decision to make photographs of all the time card records of the Mt. Clemens Pottery Company?

Mr. Cooper: Objected to. We are certainly here getting into something collateral to any issues before the Court. • • •

The Master: As long as this is cross-examination, I will reverse my ruling. The witness can state if he does know. If he doesn't, he can say so. I will direct him to answer the question.

Do you know that the Government has been photographing your time clock records, first?

A. That is correct.

The Master: Do you know what their reason for doing so is?

A. I haven't the slightest idea.

The Master: All right. He can't answer the question.

Q. (By Mr. Lamb) You don't know that the Government has taken these photographs to prevent you or the Mt. Clemens Pottery Company from destroying the time card records in violation of the statutes?

Mr. Nunneley: That is purely an argument.

Mr. Lamb: I am asking if he knows that. It is perfectly proper.

The Master: I will let him ask the specific question.

A. As previously stated, I have no idea as to the reasons. • • •

Q. Then I take it that when an employee works on an hourly basis, when he is also working on a piece work basis, you have not taken or paid him for the hours that he worked on an hourly basis the same rate of pay that

you gave him on the piece work rate per hour, is that right?

Mr. Cooper: May I hear the question?

(Question read.)

Mr. Cooper: I objeet to that question, if the Court please, it is argumentative. It is misleading. There is confusion of the rate of pay.

Mr. Lamb: It wasn't confusing to the witness before you stated your objection; he answered and he stated "No."

The Reporter: I didn't hear the answer.

A. I didn't make any.

Mr. Nunneley: I move it be stricken.

The Master: I didn't hear any answer myself.

A. No answer was given. * * *

The Master: All right, but now there is no relation between that hourly rate that you compute on the basis of the total piece work earnings of the individual and the hourly rate which the same individual would receive when he is doing work for which he is paid solely on an hourly basis?

A. There is no direct relationship.

The Master: In the case of this individual, Nicholas Daeko, for example, I think you have mentioned that he had an average hourly rate for that pay period of 52 cents an hour.

A. His combined piece work and hourly rate. I think that is shown, yes, 52 cents.

The Master: Whereas, for the time he worked on a straight hourly basis he got 40 cents an hour?

A. That is right. * * *

(A volume of payroll work sheets was marked Exhibit 50.)

The Master: As we mark the exhibits, we will have the witness look at them. Exhibit 50 has been marked. Will you identify that?

A. Those are our work sheet records for the period of September 20, 1938, to December 31, 1938.

(A volume of payroll work sheets was marked Exhibit 51.)

The Master: And Exhibit 51 is the same for what period?

A. Payroll period dated January 10, 1939, to April 18, 1939.

(A volume of payroll work sheets was marked Exhibit 52.)

The Master: Will you identify Exhibit 52?

A. Payroll period, April 25, 1939 to July 25, 1939.

(A volume of payroll work sheets was marked Exhibit 53.)

The Master: I will just ask the general question, Mr. Doll, and won't repeat it in each case. You say what Exhibit 53 is, and identify it.

A. Exhibit 53, our payroll work sheets for the period August 1, 1939, to November 14, 1939.

(A volume of payroll work sheets was marked Exhibit 54.)

A. Exhibit 54, payroll work sheets for the period November 21st, 1939, to February 13, 1940.

(A volume of payroll work sheets was marked Exhibit 55.)

A. Exhibit 55, our payroll work sheets for the period February 20, 1940, to June 4, 1940.

(A volume of payroll work sheets was marked Exhibit 56.)

A. Exhibit No. 56 is payroll work sheets for the period June 11, 1940, to September 10, 1940.

(A volume of payroll work sheets was marked Exhibit 57.)

A. Exhibit 57 is the payroll work sheets for the period September 17, 1940, to December 31, 1940. • • •

The Master: You might have this on the record. You say you are offering the individual earnings records?

Mr. Lamb: We want them identified first, then we will offer them.

The Master: I don't want to receive in evidence all

of these individual earnings records. The only ones that are necessary are the ones that pertain to the plaintiffs or those who have filed designations to have the union represent them. These records are not in bound volumes so that it is impossible to separate them. They are all individual sheets, and I would like to have them separated according to the years 1938, 1939 and 1940, in each case have a complete list of the plaintiffs or those who filed designations on the part of the plaintiffs. * * *

The Master: Outside of the question of the offering of these exhibits in evidence, do you have any further questions to ask Mr. Doll?

Mr. Lamb: Not at this time. I am going to have him subject to cross-examination about this Kresge thing, and these records.

The Master: That is true. You have a right to bring him back on that issue.

Mr. Boos: The respondent, S. S. Kresge Company, reserves the right to cross-examine the plaintiff's witness Doll until he is recalled to the stand, if at all.

The Master: All right. What about—

Mr. Nunneley (Interposing): We reserve the right to cross-examine Mr. Doll when they are through with him. There is no use of our cross-examining until they are through asking whatever questions they want to ask of him. If he is through we will proceed; otherwise we reserve our right.

The Master: I understand he is through with him outside of the matter of the Kresge—the proof relating to the Kresge Company, and it may be before we reconvene we can get some order from Judge Picard covering that subject, possibly, to take that out of the scope of the reference and have it reserved as an issue before Judge Picard rather than the Master.

Mr. Lamb: Of course, he is always subject to cross-examination on various records.

Mr. Nunneley: You reserved the right to cross-examine. You said before we went over you were going to cross-examine.

The Master: Do you want to examine him further on these records?

Mr. Lamb: Are they all admitted?

Mr. Nunneley: They haven't been admitted yet.

The Master: Well, will whether you examine him or not depend on whether they are admitted?

Mr. Lamb: Here is what I don't understand just exactly what your ruling is on the time cards.

The Master: My ruling was that I am not going to have those marked at the present time. During the adjournment of this case I am going to look up the law of evidence and see if I can find some cases on the question as to how a matter of this sort should be handled. * * *

Mr. Nunneley: The same situation should be true as to these volumes.

The Master: And, I think I will hold that under advisement, too, until I can look up the law of evidence on it. I would like Counsel, if they find any authorities on that question of how to handle a question of this sort, to submit them. If they don't submit them I will decide the question myself from whatever authorities I can find over the adjournment period. I don't see that it is necessary to decide that now. I will take that question under advisement. * * *

EVA FREDDLE, was thereupon called as a witness on behalf of the Plaintiffs, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Lamb:

Q. Will you give us your address, Miss Freddle?

A. New Baltimore, Michigan.

Q. How long have you been an employee of the Mt. Clemens Pottery Company?

A. I started to work in the pottery April 8, 1937.

Q. And what department did you work in, Miss Freddle?

A. Decal.

Q. In the decal department?

A. That is correct.

Q. Is that the same as the decorating department?

A. Yes.

Q. Were you employed in the decal or the decorating department all the time since you worked there?

A. I beg your pardon?

Q. Have you worked in the decal or decorating department ever since you began working there in 1937?

A. That is right.

Q. Approximately how far would you say the decorating department, the bench in the decorating department at which you work, was located from the time clock at which you punched in?

A. I would say about 100 feet.

Q. Would you want to give us any estimate of the time it took you to go from the time clock to the bench where you work?

A. Oh, about a minute or two, not long.

Q. Did you go directly to your bench from the time clock?

A. Yes, I did.

Q. Can you tell us whether you ever did any so-called charity work?

A. Yes, I did; every day I cut print for one hour without any pay.

Q. That is, every day since you worked there?

A. Every day.

Q. You cut print?

A. That is right.

Q. For one hour?

The Master: What do you mean by "cutting print"?

A. I am a decorator and we have to cut our designs for the next day.

The Master: What time of the day did you do this work?

A. We did that an hour before we went out to punch the card.

The Master: In the morning?

A. No, in the afternoon.

The Master: In the afternoon?

A. Yes.

The Master: In other words, when you came back at noon, you did this work?

A. Well, we worked a few hours after noon and we stopped to cut print.

Q. (By Mr. Lamb): That is, you did your other work, your decorating work?

A. Yes.

Q. And piece work for some hours after lunch, and then a period of one hour prior to the termination of the day's work you stopped your piece work and you then cut patterns for one hour, is that correct?

A. That is right.

The Master: Let me ask you this; did you punch the time clock out before or after you did this hour's work?

A. I punched the card after I cut my prints.

The Master: I see. In other words, you came back from lunch and you did your regular piece work?

A. That is right.

The Master: And after you got through with that, you spent an hour cutting prints?

A. That is right.

The Master: And then you punched the time clock out?

A. That is correct.

Q. Is that true during the entire period you worked there?

A. That is right, and then there was another occasion I did charity work is when I started working in the pottery a girl was paid to put centers in ware. Now, if the centers turned out bad, a boy put them out with acid, and the girl was paid to put these in; after quite a few

had accumulated, they took one girl and had her put them in. She usually worked all day at this, it depended on how many there were.

And then this girl found out she couldn't make as much money doing this, so we went to work one morning and I had a stack of ware sitting on my bench, centerless ware, and was told that I had to put those centers in. Sometimes I had as high as ten dozen, and this threw me back on my own piece work, because I had to do that work.

The Master: When you talk about putting centers in ware, just what does that consist of?

A. Well, it is center spray and you had to varnish the plate and let it dry, and put the decal on and rub it down and dip it.

The Master: When you took a plate and centered it, what kind of a decoration did you put on it?

A. A flower usually.

The Master: Pardon?

A. A flower.

The Master: Right in the center?

A. Yes.

The Master: Of the plate?

A. That is right.

The Master: That is what you call centering?

A. That is centering. It is a transfer that we put on to the plate.

The Master: Would that centering be in addition to other decoration put on the dinner ware, or would it be the only decoration?

A. This ware had already been decorated, and then they took the centers out that were bad, and we had to put new centers in.

The Master: You didn't do the job of taking the old centers out. You just put the new centers in?

A. That is right, because they didn't really know who they belonged to, the centers when they did blister. They were then put through the kilns. Unless they inspected

a particular person's ware, that was the only way of knowing.

The Master: When was it you had to do this particular work?

A. Well, it wasn't any specified time. What I mean is we had to do it during the day but we never knew which day we were going to have this ware.

The Master: Did it extend—what date was it? What year was it started?

A. Well, I would say about three years ago.

The Master: Have you been doing it continuously since that time?

A. That is right. Not every day. Whenever they had some, and that was brought to us girls.

Q. (By Mr. Lamb): You say that was in 1938 or 1939 that that practice was inaugurated of having you put the centers on the ware?

A. I would say it was about three years. I am not sure just when it started.

The Master: Was that something that they made you do that they didn't make the other girls do?

A. No, the other girls had to do it, too, on this item they called "600". That has a center.

The Master: Was this done during the time you were in the plant as shown by the time clocks.

A. This was done while I was working.

The Master: On a particular day, would it be done during the time that you were shown on the time clock cards to have been in the plant?

A. Yes.

The Master: You don't make any claim that it was done before or after you punched the time clock?

A. No, it was done while I was in the department.

Q. (By Mr. Lamb): There was nothing paid for that service, however?

A. No, there wasn't. In fact, it put us back on our own work, as we were working piece work. It slowed us up, because when you stop and put in eight or nine dozen

centers, why, it is bound to throw you back on your own work.

Q. Were any deductions ever made from your pay for brushes?

A. All our brushes and tools were deducted.

Mr. Cooper: Same objection we make to this line of questioning, as we made before.

The Master: You can have the objection on the basis of the claimed immateriality of the deductions.

Q. (By Mr. Lamb): Can you advise us what they charged you for brushes?

A. Well, they didn't exactly tell us the exact amount, but when I got my pay I figured it up according to the amount of dozens that I did, and the pay, the gross earnings, did not come to the same amount that I had.

Q. And what did you determine was the amount that they charged you for brushes?

A. On this one particular case, 34 cents was deducted from my pay for a size brush.

Q. Could you buy that brush any place else, or were you compelled to buy it from the Mt. Clemens Pottery Company?

A. They did not want us to buy them any place else, because there was a certain brush they had to use in that department.

Q. Could you have bought it any place else, or were you compelled to buy it from the Mt. Clemens Pottery Company?

A. Well, I think we were compelled to buy them, because they were imported brushes. We were told they were.

The Master: Who told you that?

A. The foreman.

The Master: What was his name?

A. Mr. Trabue.

The Master: How do you spell that?

A. T-r-a-b-u-e.

Q. (By Mr. Lamb): What is the fact in regard to any deductions for scissors that were used in your work?

A. Well, when I started to work in the pottery, I had my own scissors, and my foreman—that was after the girl that had broken me in—he showed me how to do the work then and he started to cut with my scissors and said that they weren't any good, and told me that they had them on sale at the shop. And, I continued to use my own, and I got these for 25 cents plus the penny tax, I think.

The Master: Did you ever buy any from the shop?

A. No, I didn't. Not scissors.

Q. (By Mr. Lamb): Do you know what they charged for scissors in the shop?

A. I don't know what they were, but they were over a half dollar. What the amount was, I do not know.

The Master: Did you use the same pair of scissors all the time you worked there, or did you replace them from time to time?

A. No, I think I had three pairs since I started.

The Master: You just went out to a store in Mt. Clemens and bought them?

A. I just went to a store.

Q. (By Mr. Lamb): Can you advise us whether any foreman ever told you that you should buy your scissors from the Mt. Clemens Pottery Company?

Mr. Nunneley: We object to that as not only being leading, but suggestive.

The Master: It is leading. You can ask her what the foreman said with respect to scissors, but your question is leading.

Q. (By Mr. Lamb): I will ask you first whether you ever had any conversation with the foreman relative to scissors?

A. Well, it was just that, when he started to cut with mine, they appeared dull to him and he said we have them on sale here.

The Master: What was the reason you bought them elsewhere instead of buying them at the Mt. Clemens Pottery Company?

A. Because I didn't want to pay over a half a dollar for scissors.

(Time cards were thereupon marked Exhibits 58 to 58-MM.)

Q. (By Mr. Lamb): I will ask you to identify these, and advise us whether those are your time clock cards?

A. (Examining cards) Yes, they are.

Q. (By Mr. Lamb) I will hand you Exhibit 58, and ask you whether or not you punched the clock at 7:01 on every morning of that two-week period?

A. Yes, I did.

Q. I will hand you Exhibit 58-J, and ask you whether each day in that two-week period you have been credited with having worked only eight hours?

A. That is right.

Q. Or a total of eighty hours for the two-week period, is that correct?

A. That is right.

Q. I will ask you whether it is not a fact that you reported on the first Monday recorded on said card for the period ending March 25, 1941, reported in at 7:01, out at lunch at 12:11, back from lunch at 12:47, and out in the evening at 4:24, is that correct?

A. That is right.

Q. And are given credit for eight hours work?

A. Yes.

Q. And, on Tuesday, immediately thereafter, you started work again at 7:01, out at lunch at 12:11, back from lunch at 12:48, and out in the evening at 4:20, and again given credit for 8 hours?

A. Yes.

Q. Can you give us the names—before I leave that subject, I offer Exhibit 58 through Exhibit 58-MM.

Mr. Nunneley: These are objected to, if the Court please, for the reason that practically all of these cards, this list of cards from Exhibit 58-A to 58-MM, show no

overtime, regardless of how it is figured. I won't say that every one is in that position, because some of them might show, on their theory, but practically all of them show no overtime, no matter how it is figured.

Mr. Lamb: Our theory is that every card in that lot shows these people were not paid according to the time they worked.

The Master: I will admit them. I think they are evidence at least of the practice of the company with respect to the time they required employees— • • •

Q. (By Mr. Lamb) Can you give me the names of some of the other girls who worked in your decorating department, whom you have seen do charity work?

A. I could name a lot of them.

Q. Will you do so, please?

A. There is Ruth Jackson and—

The Master: (Interposing) Let me ask this, in answering it, to get the definition of charity work a little more specific in the question. Do you have in mind a specific type of charity work, of the type you refer to before, of centering plates in dinnerware?

A. That is correct.

The Master: Now will you give those names?

Mr. Cooper: We object to the materiality of the question as so stated.

The Master: Well, it goes to the issue of charity work here, and perhaps some of these names will be names of plaintiffs or those who filed designations in the case. I suppose she could be asked to pick out among the list of plaintiffs—

Mr. Lamb: (Interposing) She can also show the picture of the company.

The Master: I will overrule the objection.

Q. (By Mr. Lamb) Will you continue?

A. Norma Kethe. • • •

Q. All the girls who did Job No. 600 had to do that charity work?

A. Had to do that. We each had a little bit to do each day, and it depended how much they had in one group. Like if they had a lot, we got more. It was divided—it wasn't equally divided. Some got a few pieces more and some less, but we all had to do it, all the girls that did 600.

The Master: May I ask how many girls there were in that department that did this 600 job?

A. I don't know exactly how many, but there were quite a few.

The Master: Well, roughly? What is the nearest estimate you can make? 50? * * *

A. I don't know. I would make it about 40.

The Master: Go ahead, Mr. Lamb.

Q. (By Mr. Lamb) That is the job which you refer to as No. 600?

A. That is the job that has the center.

Q. That is the centering job?

A. Yes.

Q. Putting this flower center, and so forth?

A. That is right.

Q. Now, have you seen any other girls in your department do any of this charity work of cutting patterns?

A. Everyone that—

Q. (Interposing) After you finished your piece work for the day.

A. Everyone that decorates cuts print.

Q. Could you give us the names of some girls whom you have seen do this cutting of print after finishing the piece work? Just give us the names of some.

A. I will say Ruth Jackson, Norma Hethe, Esther Miller, and in fact all of them that did any decorating.

Q. Dorothy May?

A. No, she was a liner.

Q. Can you think of any others that you want to name?

A. I will say Martha Bossow. * * *

Q. (By Mr. Lamb) Do you say all the other girls who do this decorating work cut print after doing their piecework?

A. That is right.

Q. Are you able to give us an idea how many girls are in that department, decorating department, who do this job?

A. Well, this varies, but there are times when there were 120 girls, decorators.

Q. Were sponges ever charged to you? Do you use sponges in your department?

A. Yes, we do.

Q. Were sponges charged to you?

A. Sponges and all tools were deducted.

Q. I see. I wonder if you would tell the Master more specifically what you do with sponges.

A. Well, we sponge the print down after it has been dipped. If there is,—sometime the print, when it comes out of the tub, has a tendency to bubble up and a sponge is used to sponge this print down so that it sticks onto the varnish.

The Master: In other words, you take the print and wet it?

A. Yes.

The Master: And then put it on the particular part of dinnerware that you are decorating?

A. No. First we put the varnish on the plate and then that varnish has to dry to a certain tackiness, and then we put the transfer on, and after the transfer is on we have a brush; this brush that is called a rubbing brush, and we rub this transfer down by dipping the brush into a bowl with a sponge in it and water, and rub this transfer down.

The Master: When you first put the transfer on is it moist?

A. It is dry when you put the transfer on.

The Master: And then you take the brush and dip it in water?

A. And rub over this transfer, and set a stack of ware on the tub and dip it. That is, the paper comes off and the designs remain on the plate. And sometime, if it isn't

rubbed down too hard, it has a tendency to bubble and we use this other sponge to sponge it down.

The Master: How big are these sponges?

A. Oh, the sponge is about like that (indicating).

The Master: Would you say about 4 inches in diameter?

A. Yes, something like that.

Q. (By Mr. Lamb) Do you know what you were charged for those sponges?

A. I don't know.

Q. Now, the brushes that you talked about, the rubbing brushes are those you have already testified regarding?

A. Yes. Rubbing brushes, size brushes, were deducted from our pay. Those were essential to our work.

Q. Did you ever object to this matter of making deductions from your pay?

A. Well, the girls in general discussed it, and they didn't like the idea of the company deducting from our earnings.

The Master: Did you ever make any objection to your foremen or to any superior of yours?

A. No, I didn't.

Q. (By Mr. Lamb) Did you girls ever discuss, or did you ever discuss with any foremen the question of being paid only from the succeeding quarter-hour from the time you reported in for work?

A. You mean that punching in early?

Q. Yes.

A. Well, there wasn't anything that could be done about it. It just seemed as though—

Mr. Nunneley: (Interposing) The question doesn't have to be answered that way. The question was did they discuss that question with the foremen.

Mr. Lamb: She can give her answer.

The Master: Usually the objection of non-responsiveness is only made by the party asking the question. I think it is better to answer the question directly.

Did you make such objection over that practice to foremen or any superior of yours in the plant?

A. No, I didn't.

Q. (By Mr. Lamb) Did you girls discuss it among yourselves?

A. Yes.

Mr. Nunneley: We object to what they discussed among themselves. • • •

The Master: Just a minute, I am trying to think this through. Of course, the defendants claim plaintiffs are barred from recovery here because they accepted the practices of the management over a period of years and never made any protest to management.

The Witness: It didn't do any good to protest.

The Master: I don't see the relevancy of what they said among themselves. I assume that they may have grumbled or protested about the practice among themselves, but if it wasn't communicated to the management I don't think it is relevant to this proceeding.

I think you can tell why it wasn't protested to the management.

Mr. Lamb: She just testified it wouldn't do any good because they would lose their jobs.

Mr. Nunneley: She didn't say it, but she will, I assume, after you have told her to.

The Master: I don't think she did say that.

Mr. Lamb: Can we read back the last answer? I may be wrong about this. Ask the witness whether she said that.

The Master: She said it would do no good to protest, I believe, but she didn't add the last statement.

Mr. Lamb: What was the last statement?

Mr. Nunneley: What you said.

Mr. Lamb: What was the last statement? You mean that I said?

The Master: Yes. The last statement you said that it would do no good to protest because she would lose her job. It might do no good to protest for some other reason. If you want to ask her why she didn't protest, it might be competent. • • •

Q. (By Mr. Lamb): Why didn't you protest to the manager?

A. For the simple reason that if I protested I would either lose my job or be given a job where I couldn't make any money.

Mr. Cooper: We move the answer be stricken as being a conclusion, not shown to be based on anything in the nature of a fact.

The Master: I will overrule the objection. You are raising the defense, the fact that they didn't protest: I think that becomes relevant as to what the reason was the employees didn't protest.

Mr. Lamb: Without waiving the objection to the matter of making the proffer, and reserving the right to ask that the witness herself be allowed to state the evidence she would give if permitted so to do, counsel for the plaintiffs states that if this witness were permitted to answer, she would testify from Exhibits 59 and 59-A, that during the period ending June 17, 1941, she produced 460 dozen of 7-inch plates, the piece rate thereon being $8.90 per hundred dozen.

That by reason of said production during said period, the plaintiff earned $40.94. That there was deducted therefrom the sum of 41 cents for social security, leaving a net which she had earned of $40.53. That the check given to her for the two week period ending June 17, 1941, amounted to $40.19. That the difference between the amount earned on said piece rate and the amount of the check given her was 34 cents, and represents a charge for a sizing brush, charged against this employee witness; that said charge of 34 cents was made for sizing brush, the type of which can be bought any place else for 20 cents.

That Exhibit 59-A represents this witness' record of her production during each of said days, and Exhibit 59 represents a payroll voucher stub given to this employee witness. * * *

Cross Examination

By Mr. Nunneley:

Q. Do you belong to the Union that brought this suit?
A. That is right.
Q. Do you hold an office in it?
A. Yes, I do.
Q. What office do you hold?
A. I am temporary recording secretary.
Q. Temporary recording secretary. And how long have you had that job?
A. I don't know exactly, but I think it was October.
Mr. Lamb: October of what year?
A. Of 1941.
Q. (By Mr. Nunneley) Was it communicated to you that you were supposed to bring the books and records here?
Mr. Lamb: Objection.
A. No.
The Master: I didn't make such an order. I took it under advisement.
Mr. Nunneley: We will ask it now, that the secretary be required to produce them.
The Master: Have you custody of the books and records of the Union?
A. No, I do not. I have the minute book, and I haven't that in my possession now.
The Master: Who does have custody of the records?
A. I don't know where that is.
Q. (By Mr. Nunneley) You said you have a minute book? Did you say that a minute ago?
A. I have charge of it, but I haven't it.
Q. You don't know who has got it now?
A. No.
Q. Who did you give it to last?
A. My boy friend took it down to Mt. Clemens and gave it to the hall.

Q. Who is your boy friend?

A. Jerry Schom.

Q. You gave it to Jerry Schom and he took it down to the hall. From there it disappeared, is that right?

A. What happened to it, I don't know.

Q. There isn't any reason why you don't want to produce the minutes, is there?

Mr. Lamb: Objection.

The Master: I will overrule it.

A. I wasn't asked to produce it.

Mr. Nunneley: I am going to ask the court to order the witness to produce it. * * *

The Master? Do you have any idea where that minute book is?

A. No, I don't.

The Master: So far as you know, is it missing so that nobody knows where it is?

A. I don't know that.

Q. Are you supposed to have custody of it?

A. I believe I am.

The Master: Were you with your friend when he took it down to the hall?

A. No, I wasn't.

The Master: Well, I don't know how I can order the witness to produce a minute book that she doesn't have and doesn't know where it is.

Mr. Nunneley: I think, then, that the plaintiff can be ordered to produce it. You ordered this corporation of ours, this company, we are directed to produce records, and we assume that we will be in contempt or something if we don't produce them, and we produced them.

So we will ask now that this Master direct the plaintiff Union, the recording secretary of which is here and the attorney of which is here, to produce those records. * * *

The Master: Do you have the constitution of the Union in your possession?

A. No, I haven't.

The Master: Have you had it in your possession?

A. No.

The Master: Do you know who has that?

A. No, I don't.

The Master: What about the by-laws?

A. I don't know who has that.

The Master: Have you ever seen the constitution?

A. No. I haven't. * * *

The Master: Can you produce the constitution and by-laws of the Union?

Mr. Lamb: I don't know: I suppose so; I don't know any great reason why not.

The Master: There wouldn't be any very substantial objection to that; there wouldn't be any question of privilege?

Mr. Lamb: I don't think so; I have never seen them; I don't know anything about them.

The Master: I will ask you to bring the constitution and by-laws in.

Mr. Nunneley: I think he should be requested to bring the minutes in too.

The Master: I will first see the constitution and by-laws. Maybe the issue that Mr. Cooper is raising will be settled by the constitution and by-laws.

Mr. Lamb: I will say this, I don't know where to look for—

Mr. Cooper: (Interposing) This, of course, is the second request we have made for this, your Honor.

The Master: That is true. * * *

Q. (By Mr. Nunneley) You worked there since when, at the pottery?

A. April 8th, 1937.

Q. The method of keeping track of the time, the time cards, was just the same all the time you were there?

A. Will you repeat the question?

Q. Was the method of keeping time and figuring the hours on the time cards just the same during all the while you were there?

A. Yes, it was.

Q. So that as far as the method of figuring, that was the same all from 1937 until the time you quit here in November, is that right?

A. Do you mean we punched in at different times, or what?

Q. I say, the method that they figured up the number of hours by, that was just the same, wasn't it?

A. I believe it was. * * *

Q. You knew during all the time you were there that they figured your time from the time you went in there started at the next quarter-hour, you knew that, didn't you?

A. I don't understand that.

Q. Well, on the card here, Exhibit 58-A, there are certain figures in red pencil?

A. Yes.

Q. Do you know what those are?

A. Yes, those are the hours I worked.

Q. Those are the hours you worked. And those were figured on all your cards every day, isn't that right?

A. That is right.

Q. Now, you worked in the decorating department?

A. That is correct.

Q. And you did what they call decal work?

A. That is correct.

Q. How does this decal stuff come? I might say, if the Court please, I have asked my client to bring some of it down here tomorrow so that we could have the witness show you how it works, and perhaps everybody could see better how it works. It comes in sheets, does it?

A. In a great big sheet.

Q. About how large are the sheets?

A. Oh, I don't know the exact dimensions. I would say about 3 feet long and about 2 feet wide. I am not sure if that is right, but that is approximately.

Q. Scattered around on there, I suppose, are the flowers?

A. That is right.

Q. Whatever the design is, might be flowers, might be horses, or most anything, is that right?

A. Yes.

Q. To get those so that you could use them, you had to cut them out of the sheet, is that right?

A. No, a girl pinned them together according to the different types of ware, and they were cut in long pinnings, and we had to cut these pinnings into bunches.

Q. You had to cut the things out so that you could put them on a plate?

A. We cut 16 sprays at one time when we cut a bunch.

The Master: What do you mean, you cut 16 sprays?

Q. (By Mr. Nunneley) They piled them up?

A. That is right.

Q. So they were 16 thick, similar to the way I am holding the time cards?

A. If they were seconds, they were not 16 thick. If they were second print; like if they had to run torn prints, there would not be 16. There would be less, and we had to sort them as we printed our ware. We lost time doing that, too.

Q. Anyway, as you worked, you would take your scissors to cut that out?

A. That is right.

The Master: Cut through 16 thicknesses with the scissors?

A. Yes.

Q. (By Mr. Nunneley) It is quite thin, is it?

A. Yes.

Q. That is the work you use the scissors for, is it?

A. Yes.

Q. We will say that these cards that I have here, being Exhibit 58-A down to MM, if you were going to use these figures on here for decorations, you would just cut along the decorations around, is that right?

A. Yes. We would have to snip off the ends and then cut around.

Q. And got them in shape to stick them on the dish?

A. That is right.

Q. You spent some time every day doing that?

A. Yes.

Q. And during all the time you worked there, you always spent some time doing that?

A. I spent an hour each day cutting print.

Q. After you got through cutting them out, what did you do with them?

A. I piled them in my box and used them the next day.

Q. In other words, that was all part of your job, wasn't it?

A. I wasn't told that when I started in there.

Q. But from the very day you started, that is the way you did it?

A. I was told the number of dozens, what I would get. But I was told the price of the number of dozens, they didn't tell me I had to do this.

Q. But from the very first day you started, it did include it, didn't it?

A. I was paid by the hour at first.

Q. You were paid by the hour, because you didn't earn the amount, is that right?

A. Because I didn't do the amount of dozens.

Q. That is right. So that they took up whatever you earned and added enough to it to make you whatever the hourly rate was, didn't they? * * *

A. Yes. * * *

Q. And that continued until you were able to earn more, didn't it? * * *

A. That is right. That was only two pays that I was paid by the hour.

Q. Only two pays. After that you got skillful enough so that you could earn more than that.

A. I wasn't the first day, but I was scolded if I didn't hurry up and make my day rate, I would be fired, they would get someone else in my place to do that work.

Q. You were told to do your rate, so you got up to it inside of two pays, is that right?

A. That is right.

Q. And, since that time you have been about it all the time, is that right?

A. I have been above my rate all the time.

Q. You have been above the rate all the time?

A. When the new pattern was started, I fell below it. You see, one week was the old pattern and I made over my day rate that week.

Q. Yes.

A. And the amount that I made over my day rate for the next week of the pay when I was on the new pattern some days I did not make a dollar but what I had made over from the first pay was added to the amount to balance it up that I was paid the minimum rate.

Q. That you were paid the minimum rate for the two weeks period?

A. Yes, but the one week I really made over my minimum rate.

Q. I see. But, during the two-weeks period you did not make over your minimum rate?

A. Not according to my check.

Q. And now often did that happen?

A. That happened when a new pattern was originated.

Q. But, I say how often?

A. It only happened to me—I have only been on one new pattern that I didn't make my rate.

Q. Well, it only happened to you once?

A. But, I have had three checks that I was paid the minimum rate.

Q. (By Mr. Nunneley) By the way, who do you come back and forth to work with?

A. For what period do they want to know?

Q. (By Mr. Nunneley) Up until April, 1941?

A. Up until April, 1941?

Q. Yes.

A. From the time I started working there?
Q. Yes.
A. Well, sometimes I drove and sometimes I rode with a fellow from New Baltimore.
Q. The names, please?
A. Edward Hishon.
Q. Is that the only one?
A. No: I rode with Loretta Rivard. • • •
Q. (By Mr. Nunneley) What department did she work in?
A. The decorating.
Q. The same department you did?
A. Yes.
Q. Did she work all the time you did?
A. She started at the same time I did.
Q. Worked there up until the time you left your job?
A. That is right.
Q. How often did you ride with her or she with you, either way?
A. You mean all the time?
Q. How often did you come together?
A. When I rode with her I came every day.
Q. What period, then, did you ride with her? • • •
A. I don't know. I had another rider I just happened to think of now.
The Master: Who was that?
A. James Plegue.
The Master: Was he the driver?
A. Yes.
Q. (By Mr. Nunneley) Could you tell us when it was that you were riding with Loretta Rivard?
A. Well, when Mr. Plegue got a job at New Baltimore, I quit riding with him.
Q. Were you riding with Miss Rivard during 1941, or 1940, or 1939, up until the time of the strike?
A. I rode with her a few months in 1941.
Q. A few months in 1941?
A. Yes.

Q. That would be up until the time of the strike you were riding with her?

A. That is right. . . .

The Master: How far back?

A. I don't know exactly the year. I think it was—I am not sure about this, but I think it was around 1939.

Q. (By Mr. Nunnsley) Did you ride with her in 1940?

A. I don't remember offhand if I did or not. I have driven my own car and I rode with these other people, and I can't remember exactly.

Q. From January to April, 1941, did you ride with Loretta Rivard?

A. January, 1941, to April?

Q. Yes. . . .

A. I don't remember.

Q. Don't remember any time in 1940?

A. I don't remember if I did or not.

Q. Where did Mr. Hishon work?

A. He worked, I think it was the glost belt.

Q. Glost belt department. And, James Plegue, where did he work in the plant?

A. I don't know where he worked. . . .

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The Master: Were you able to get the constitution and by-laws?

Mr. Lamb: No, I haven't. These people I talked to last night, I mean the people that are in attendance, don't have them. I haven't talked to anyone else.

The Master: Then, over the adjournment, why, you can undoubtedly get them, and bring them back. . . .

(The sheet above referred to was thereupon marked Exhibit 60, by the reporter.)

Q. I show you the sheet that is marked Exhibit 60.

Is that a sheet of decal, as you call it (handing exhibit to witness)?

A. That is.

Q. And is that the way you get it?

A. No.

Q. No. And, that is the way it is kept in stock, is that right?

A. That is correct. * * *

(A sheet was thereupon marked Exhibit 61, by the reporter.)

Q. (By Mr. Nunneley) Is Exhibit 61 what is known as a pinning?

A. That is known as a pinning, and this is what I meant by the attachment (indicating). See, sometimes this has run into this (indicating). It has come right under here, and in cutting, we have to zig-zag, but this is more where I could cut more straight across. * * *

Q. (By Mr. Nunneley) How is it determined how many you get?

A. By the number of dozen we do; we order our print.

Q. In other words, that is what I am getting at, you order your prints from the print room yourself?

A. That is right.

Q. And you order what you expect to do of that pattern?

A. And sometimes we don't get the full order.

Q. Yes, I know. I say, you do order—that is determined by your own judgment of how many you are going to be able to do?

A. That is right.

Q. The next day?

A. Yes.

Q. And customarily what time during the day do you put in your order for these prints?

A. We put in our order when we come back after dinner.

Q. At noon?

A. After I have punched in.

Q. After you have punched in you go over there and put in your order for the prints?

A. Sometimes it is done in the morning, if the charts are up. It depends on when the charts are marked that says what kind we have for the next day.

Q. You look at the chart and see what kind of ware you are supposed to work on the next day?

A. That is right.

Q. Then you go over to the print shop, or the print room, and you order as many prints as you expect to do the next day?

A. That is right.

Q. And that depends entirely on yourself how many you order, doesn't it?

A. That depends on myself, but it doesn't mean that I can do that many the next day. It depends if I am given any charity work, then I can't do that much.

Q. All right; you order the number you expect to do the next day?

A. Yes.

Q. In other words, they don't put on to you the number you have to do, do they?

A. No.

Q. Then the girl that is in the print shop, she puts them from what is Exhibit 60 into Exhibit 61, is that right?

A. That is right. . . .

Q. (By Mr. Nunneley) When do you get the prints?

A. When do I get it?

Q. Yes.

A. Just before I start cutting.

Q. Well, all right. And when do you start cutting?

A. An hour before I punch the time card.

Q. And who determines that?

A Well, we have to allow an hour to cut that print.

Q. In other words, you have to determine enough time sometime during the day to cut your prints for the next day, is that right?

A. Yes.

The Master: Do you keep a watch, or is there some signal given when you are supposed to start?

A. Well, I have my watch.

The Master: You just look at the watch and decide about the time you need?

A. Yes.

Q. (By Mr. Nunneley) That is also a matter that is up to you, how quickly you can cut them and get ready for your next day's production, isn't that right?

A. That is right.

Q. So you do that after you have finished your quota or the number of pieces that you are going to finish, like today, then you go and get your prints and cut them for the next day, isn't that correct?

A. That is right.

Q. Isn't this correct, that the work like you are doing today, that is, it has to be completely finished or it will spoil? It can't stay overnight, isn't that right?

A. It can not stay overnight.

Q. It can not stay overnight. So that whatever work you are going to finish, you try to finish sometime before quitting time, don't you?

A. That is right.

Q. Then you get your prints and get those ready for the next day?

A. That is right. * * *

Q. After you get the print, after you get one of these prints like Exhibit 61, what is the first thing you do with it?

A. The first thing I do is get my scissors and snip the ends off, the sides. * * *

Q. That is to get right down to the edge of the thing?

A. Yes. * * *

The Master: In other words, you have to cut these patterns down so there is almost no extra white showing?

A. That is right.

Q. (By Mr. Nunneley) Then what do you do?

A. Then I trim the shape of the print.

Q. And by doing that, you cut out the pattern that is shown there?

A. That is right. * * *

The Master: Then, after you have cut into bunches then what do you do?

A. We stack them up and put them in our box. * * *

Q. And the next day you get your prints from them and proceed to put them on the plate, is that right?

A. That is right.

Q. Now, during all the time that you have worked there, has what we have just described been the procedure for getting your work ready?

A. Well, we always had to get our print and cut it for the next day.

Q. Cut it for the next day. That has always been part of your occupation there, hasn't it?

A. That is right. One occasion I had to move, and the foreman didn't tell me until very late, and I asked him if I could take my print home. He said no. So, then, the next morning I had to cut it before starting.

Q. He wouldn't let you take it home?

A. No.

Q. That is right. * * *

Q. Now, did you keep track of your production?

A. Yes, I did, from the first—the second,—first strike, I did. * * *

Q. I am asking you about before this suit started. You kept track of your production in a notebook; that is right, isn't it?

A. Yes.

Q. Did you do that during all of the time you were there?

A. I did.

Q. And did you say you did not have any of those notebooks now?

A. I never kept them, because before the first strike I never knew I would never have the chance to present this notebook.

Q. Never had a chance to present this notebook?

A. I never thought this opportunity would come that I could present it in court.

Q. Oh, that you could present it in court. Did you know that you were paying for brushes?

A. Yes.

Q. You knew you were paying for them. And, how many brushes would you use in a year?

A. Well, a rubbing brush, between two and three a year.

Q. Yes, and what—

A. (Interrupting) And the size brushes, I used more of those.

Q. Well, how many size brushes, would you say?

A. Well, I would say three or four.

Q. Three or four size brushes, and a couple of rubbing brushes in a year?

The Master: How many sponges would you use in a year?

A. Well, a sponge I didn't use so much. I think I have had, since I have worked there, about two or three sponges.

Q. (By Mr. Nunneley) You have had two or three sponges; let us see, you have been there about five years, haven't you?

A. That is right. You see, I am a flat worker and I don't have so much for a sponge as a hollower.

Mr. Nunneley: I move that the answer be stricken as not being responsive. I asked her how many sponges she used.

The Master: I will leave it in; I think it is responsive to the question; it is some interesting information.

Q. (By Mr. Nunneley) You knew you were charged for those articles?

A. Yes, I knew it because my pay was short.

Q. That is the only way you knew it?

A. Yes.

Q. Didn't anybody ever tell you when you started that you would have to pay for the brushes?

A. No, when I started I wasn't told that.

Q. They gave you a brush?

A. They gave me one.

Q. And gave you a sponge?

A. But I wasn't able to figure out my pay from the first two pays because I was a new girl and I had no idea; I was told I got that much per hour, but the first day I don't remember how many hours I worked.

Q. I see.

A. It wasn't a full day.

Q. When you started you were getting the hourly rate until you could produce; that was explained to you, wasn't it?

A. I was given the hourly rate for two pays.

The Master: Miss Freddle, who was it that hired you at the plant?

A. Mrs. Grant.

The Master: What is her position?

A. She would hire the girls.

Q. Was she personnel director, or something of that sort?

A. Yes.

The Master: And was she the one that gave you the instructions as to what you were to get?

A. No, she didn't; she just took me to the foreman and introduced me to him and he took me to the girl that broke me in, and this girl told me that I should bring my own scissors, if I didn't want to buy any from the company.

The Master: Wasn't there any discussion between you and Miss Grant, or Mrs. Grant?

A. Just the information that she asked me my age and all that; she said she was going to take me to Mr. Trabue.

The Master: Was there any discussion between you and Miss or Mrs. Grant, or between you and the foreman, Mr. Trabue, as to the compensation you were to get when you started work?

A. I was told I was going to get 25 cents an hour.

The Master: For how long?

A. That was until I was—I think it was a four-week period.

The Master: And what were you to get after that?

A. After that I was to be paid according to the number of pieces I turned out, and there was no mention made about the print—

The Master: Did they tell you the exact amount you were to get per piece you turned out?

A. On that item I was doing, he told me.

The Master: You had some friends that worked at this plant on this job before you went to work there?

A. No, I didn't; not in the decorating department; I didn't know anyone when I went in there.

The Master: The only way you would know what you were getting paid—

A. Hearsay.

The Master (Continuing) —you were told by the foreman or Miss Grant?

A. As far as the hours, the rate per hour, what I was to get for this item I was broken in on.

The Master: After the hourly rate expired and you were to be paid on the piecework basis, was that four weeks after?

A. Yes.

The Master: Were you told by the foreman what you were to get?

A. I was told what it was per hundred dozen; they always figured it per hundred dozen; there was no mention made—

The Master: Any mention made for charges of equipment?

A. No, they didn't say there was any charge for equipment. I was brought my first sponge and equipment.

The Master: In other words, they gave you one of each item of equipment that you needed at the outset.

A. That is right.

The Master: Do I understand nothing was said one way or the other as to who would pay for the replacement?

A. No.

The Master: That is, nothing was said?

A. Nothing was said.

Mr. Lamb: Do I understand the Master asked whether she was given the first brush and first scissors, and so on?

The Master: Yes.

Mr. Lamb: Without being deducted from her pay?

The Master: Yes, I understand she testified to that previously and she just repeated it; that is right, isn't it?

A. That is right.

Q. (By Mr. Nunneley): In other words, the first one wasn't deducted from your pay?

A. No.

The Master: Did the brushes wear out, or was it a case of mis-laying or losing them?

A. The rubbing brushes, but in the size brushes, there are different sizes, and if you did big ware the foreman wanted you to use a larger brush, if you did smaller ware he wanted you to use a narrower brush, and inasmuch as I was changed, sometimes, the change was at longer intervals, and then I would have to lay the one brush aside and if I was changed back onto that item sometimes that brush was of no use, the hair would be out and I couldn't use it.

The Master: When you started to work, how many brushes did they give you; in other words, did they give you the different sizes?

A. No, they didn't they just gave me the one that was of the size of ware I was doing.

The Master: When you came to different size ware did they give you the first brush?

A. No, I had to get that brush and it was deducted from my pay.

Q. (By Mr. Nunneley): How long did you work on the first kind of ware?

A. I don't remember; I imagine it was about three months.

Q. In other words, you worked on the first kind of ware until a time when at least you were earning more than the 25 cents an hour?

A. That is right.

Q. You earned more than 25 cents an hour within two weeks, I think you said?

A. Yes.

Q. And isn't it true that you were told that just as soon as you earned more than that at the piecework rate, that that would be paid to you?

A. That is right.

Q. And that is what happened, isn't it?

A. Yes.

Q. When did you first find out that you had to pay for any brushes?

A. Well, I was short on my pay.

Q. I say, "when".

A. I don't remember when it was; I don't remember when the first time I brought a brush was.

The Master: Can you give a rough idea, what is your best guess as to how long after you started to work there that you found out or were short on your pay?

A. I imagine it was the first part of 1939.

The Master: And you started to work there what time?

A. I mean—wait a minute—'37—'38 I bought a brush.

The Master: The first part of '38?

A. Yes.

Q. (By Mr. Nunneley) Then as soon as you bought the first brush, at least then you found out that you were paying for it?

A. Yes.

Q. And who did you get the brush from?

A. I got it from the print office.

Q. You went to the print office and got the brush?

A. Yes.

Q. Who was in charge, a girl in charge there?

A. Yes, sir.

Q. You just asked her for a brush?

A. I was told to get a brush there.

Q. Told you could get a brush there Who told you that?

A. Well, the foreman.

Q. What had happened to your other brush?

A. My other brush, the size brush wasn't of any use any more.

Q. Yes.

A. The hair came out and it got all over the varnish on the plate.

Q. He told you you could go over there and get a brush?

Q. Yes.

Q. Do you mean to tell us you didn't know by that time you would have to pay for the brush?

A. I knew that the girls would have to pay for their tools after the first one was given to them.

Q. Yes. When did you find that out?

A. Well, I heard that right after I started working there, I knew they had to.

Q. So that as a matter of fact right after you started working there, in some manner you discovered you would have to pay for the tools?

Q. Yes.

Q. So that there were no deductions taken out that you didn't know about, were there?

A. Well, I have been short on my pay sometimes when I haven't bought a brush.

Q. Yes.

A. I don't know what it was for.

Q. Did you ever check up to find out why?

A. No, I didn't. I checked up with my dozens, and the amount does not equal the amount that I should have received.

The Master: On this proposition of rate of pay, were

you paid a different rate, depending on the type of ware that you turned out?

A. That is right.

The Master: Were you always paid, yourself, on the basis for the ware you turned out, or were you paid on the basis of the ware the group turned out?

A. I was paid on the basis I turned out.

The Master: How many different rates of pay were there?

A. Each item had a different price on it.

The Master: How many different items were there, roughly?

A. Oh, I would say ten.

The Master: How did you find out what the different rates of pay were?

A. When I started in there, if I got on a different pattern, different item of that pattern, I would ask the girl next to me.

The Master: Were you ever furnished with any mimeograph sheet or any other form of written instructions as to what the different rates of pay were for the different types of work?

A. If they had a raise on it or something, they would have a paper up on the wall.

The Master: On the bulletin board?

A. Yes. Well, in the department they didn't have any—in my department they had no bulletin board.

The Master: It was on the wall, then?

A. Yes. And that would state the rate, if there was a change made.

The Master: How long was that left up, then?

A. That wasn't up there very long. I don't believe it was up there even a week.

The Master: You kept production records every week you worked there?

A. I have, but I haven't them previous to the strike.

The Master: Did you each week check up and compare the amount that you thought you were entitled to

by your production records, with the amount the company paid you?

A. Yes.

The Master: Then if there was a difference between the two, what did you do?

A. If there was a large difference, I told them, but if there was a small difference, I never mentioned it. And I had a difference here about a year ago of $4.00. I told them about that. But if it was a matter of 45 cents or less, I never mentioned it.

The Master: Were you usually able to trace these differences down to the purchase of a brush or something of that sort?

A. Well, sometimes I figured the deduction was for that. When I bought a brush, I could always know it was deducted.

The Master: Now, this incident a year ago when you found a $4 difference between the pay that the company gave you and the amount which you were entitled to according to your production records, you say you complained. Who did you complain to?

A. I told my boss, Mr. Trabue. And Mr. Friedberg is the one that figured up the pay.

The Master: Mr. Friedberg, is he in the office?

A. He was then, I think.

The Master: Then what happened when you complained?

A. Then they discovered that they forgot to mark me for one day's work and I was told that the next pay I would get it or else Mr. Friedberg could take it out of his own money if I didn't want to wait, and I said I would be willing to wait.

The Master: Who told you that? Mr. Friedberg?

A. Mr. Friedberg.

The Master: Did you get it the next pay?

A. I did.

Q. (By Mr. Nunneley) And you didn't get fired?

A. No.

Q. Did you have occasion to make any other complaints besides that one?

A. What do you mean, in what regard, complaints?

Q. Regarding your amounts of money that you received.

A. No, I never complained otherwise.

Q. So that excepting for that one occasion, all the other occasions appeared to be for things that you had purchased, is that right?

A. Yes, but I have one occasion here since the first strike— . . .

The Master: I think I will have to restrict this to before the first strike. Do you have any occasions before the first strike?

A. Not any other than the $4 that was missing; I did not complain otherwise.

The Master: Does that mean that you never did make any complaint about the rate of pay except on this one occasion before the first strike, or does it mean you don't remember whether you made any other complaints?

A. I don't think I made any other complaints.

Q. (By Mr. Nunneley) Now, something was said about centering, and we marked on Exhibit 60, the pattern, the item that is a center, is that right?

A. That is right.

Q. Now, that centering, to start with, that item is an item that goes directly in the center of the plate, is that right?

A. Yes.

Q. And why would it be necessary to do the job over?

A. Because it would blister when it went through the kilns.

Q. Because it would blister when it went through the kilns. And would there be any other reason?

A. Well, if there were paper left on and it went through the kilns, there wouldn't be a center on the plate.

Q. Would there be any other reason?

A. If it were scratched when put on the pin board.

Q. And any other reason?

A. Well, I don't see any other reason, other than that it isn't a perfect center. There was some flaw on it, then it had to be taken out.

Q. Now, those were all articles that you or the other girls on the same pattern had been paid for doing?

A. That is right.

Q. And if they turned out bad, at least in some instances, they came back to you, didn't they?

A. Well, whenever centers were returned, I always seemed to have my share.

Q. You did. There wasn't any way of determining if there were, say, five girls doing that particular pattern, there wasn't any way of determining which ones any particular girl did?

A. Not unless they inspected that particular person's work.

Q. I say after it has gone through the ordinary process of going through the kilns, there wasn't any way of determining which ones you did or which ones somebody else did, is that right?

A. No.

Q. About 3 years ago. And, since that time you have been putting centers in?

A. If I am doing that item.

Q. If you are doing that item?

A. I mean, if I am doing this pattern 600.

Q. That particular item.

A. If I were on another pattern, then I wouldn't be brought in.

Q. In other words, these centerless center jobs came back to the girls, presumably at least, who did them in the first place?

A. That is right.

among the number of girls who did it, isn't that right?

A. Not always equally.

Q. Well, pretty nearly equally, isn't that right?

Q. Well, as a matter of fact, that job was divided up

A. Quite.

Q. What is that?

A. Quite.

Q. Quite equally. They didn't count every one?

A. No.

Q. But, they gave you each a stack about the same size, didn't they?

A. A boy would go down the line and he had a stack, and sometimes if the girl was working on another line that did that item, and he overlooked that girl, that girl didn't get any, and these girls in this row did. Oftentimes—

Q. (Interposing) That would be a mistake on the part of the boy for overlooking her, wouldn't it?

A. That is right.

Q. In other words, there wasn't any intentional effort to load any one of you up with any more than the rest of you, that work, isn't that right?

A. That is right.

Q. And you say this centering business happened every day?

A. No.

Q. How often would it happen?

A. There was very seldom a week went by that I didn't get any.

Q. You would say once a week, or once every two weeks, you would get them?

A. Well, I would say sometimes I would do it once a week and then there might be a time I might skip a week and might not get any.

Q. How many do you generally have—would you have ordinarily?

A. Sometimes a dozen, sometimes less, sometimes two dozen. All the way from a half dozen up to ten dozen.

* * *

Q. And to do a dozen would take you how long?

A. To do a dozen? Well, it would at least take me 15 minutes.

Q. About 15 minutes. So that about once a week or so you may be required, or you might have to spend 15 minutes doing that?

A. That is right.

Q. (By Mr. Nunneley) Now, on this centering business, if there were scratches on there, who ordinarily would that be caused by?

A. The scratches could be caused by the decal girl, or the liner.

Q. You would be the decal girl?

A. Yes.

Q. And if there was too much white paper left on there, whose fault would that be?

A. That would be the fault of the decal girl in dipping.

Q. In other words, that would be your fault?

A. That is right.

Q. What else did you say happened to them?

A. I said they blistered, scratched, or paper left on them.

Q. And blistering, what caused that?

A. Well, the girls were blamed for that, but I don't believe we were to blame for it because the size is never the same texture on account of the weather—

Q. (Interposing) I didn't ask you just that way; you said the girls were not to blame; I asked you if you knew what caused it.

The Master: She is telling you.

Mr. Nunneley: We will give her a chance to explain. I asked her now if she knew what caused the blistering?

A. Weather conditions could cause blistering, and not rubbing print down hard enough, or improper sized coat.

Q. If it wasn't rubbed down hard enough, whose fault would that be?

A. The decal girl.

Q. And that would be your fault, if you were doing it?

A. That is right.

Q. What else did you say could cause it, the weather?

A. The weather; we didn't have an even temperature in the decorating department.

Q. Change in temperature might do it?

A. Change in temperature might do it.

Q. In other words, what kind of a change in temperature?

A. Well, if it rained a lot; our size was never the same from one day to the next; you could always see the difference.

Q. The size was never the same. By "size", you mean—

A. The varnish.

Q. (Continuing) —the varnish that you put on. So the fact that the centers were wrong, if they were wrong, was generally due to something the decal girl had erred in, is that right?

A. I say it is not always the decal girl, sometimes it is the weather. * * *

Mr. Nunneley: Of course, the witness says she hasn't made any complaint about those things, anyway; have you?

A. I haven't to the foreman. I have made—not I, but in the department, the group of girls made a complaint about the wages.

Q. When was this?

A. This was on that new pattern.

Q. I say when?

A. The new pattern, when I was put on it, was in May.

Q. May of what year?

A. 1940. And all the girls that did that pattern—

Q. (Interposing) Were you in that group?

A. Yes, I was. But I wasn't the spokesman.

Q. You made a complaint about your wages to whom?

A. To Mr. Trabeau. All with the exception of a very few girls on that pattern. And he said there wasn't anything that could be done about it, we should go to see Mr. Doll. So there were a few girls that went to see Mr. Doll.

Q. Which Mr. Doll?

A. Mr. Doll, Senior, I think. I don't know; they went to see Mr. Doll, that is all I know.

Q. That is all you know about that?

A. And we were then paid the minimum wage, and some of us had been making over the minimum wage, but on this new pattern we were paid the minimum wage and the other girls that had just started there were making way over the amount of money we were, but it was always the older girls that were put on the new pattern, and we suffered the loss in pay.

The Master: What do you mean by minimum wage, 25 cents an hour?

A. No, at that time it was 30. • • •

Q. Of course, you don't know what took place when they were there, excepting what somebody else told you?

A. That is right.

Q. Who were the people that went to Mr. Doll, that you know of?

A. I just know of one girl in particular and that is do you want to know her name?

Q. Yes.

A. Agnes Pelkey.

Q. Agnes Pelkey?

A. Yes.

Q. Nothing was done about it, is that right?

A. We were paid the minimum wage, that was all that was done.

Q. That is all that was done. No change was made in the rate on the article?

A. Not at that time.

Q. Well, was a change made?

A. Later on they had a slight raise.

Q. They had a slight raise. I see. How much later?

A. I do not know exactly.

Q. Well, approximately how much later? • • •

A. I would say about a month later they made a raise on 5 inch fruits, and that was the item I started out on.

• • •

Q. You were not discharged for your part in that affair, were you?

A. No. I asked to be taken off of 5-inch fruits, and I had to almost go on my knees to be taken off of it because I was used to doing big ware.

Q. I see. So you, not being satisfied with doing 5-inch fruits you sought to be taken off of it?

A. I asked for a change, because I was accustomed to doing big ware.

Q. And after some persuasion you succeeded in getting them to do that?

A. Yes, I finally did that.

Q. They did that?

A. Much persuasion.

Q. And they didn't discharge you for doing that, did they?

A. No.

Q. Now, your job consisted first of cutting out prints, didn't it?

A. That is right.

Q. And then putting the varnish on the ware?

A. Yes.

Q. And then you put the print on the ware?

A. Yes.

Q. And then you rubbed it down?

A. Put the print on the side first and then scratched the ware up.

Q. Yes.

A. And then took the center piece out and went through the whole stack over again to put the centers in.

Q. Yes. And then what did you do?

A. Then I had to rub the same down with a brush.

Q. Rub the same down with a brush, and what did that do?

A. That rubbed the print into the ware.

Q. Yes.

A. Into the size.

Q. And then what became of the ware?

A. Then it was,—first we had to rub the sprays down and take a stack and dip it in our tub.

Q. Yes.

A. And the paper would come off.

Q. Yes.

A. And we had to take the size off if there was any on the edge.

Q. Yes.

A. So the line held.

Q. Then what?

A. Then we put them up on the rack.

Q. Up on the rack. And, where was the rack set?

A. Right in back of our bench.

Q. Right in back of your bench. And what became of them from then on?

A. The liner lined the ware after that.

Q. They were taken over to the liner, wherever she worked?

A. That is right.

Q. And who counted them?

A. I counted them.

Q. And what did you do, put a ticket on the ware that you had that day?

A. There was a time, yes, I had to turn in a ticket to the print room for each—they were alphabetically lettered little boxes, and we had to put our ticket in the print box.

Q. So that at the end of each day you put in the box, did you, how many you had done that day?

A. Yes.

Q. And that is where you got the record from that you kept in the little book, is that right?

A. That is right. And, also, we had a print slip, and the same amount of dozens we did each day was marked on the print slip and we had to keep a record of the print that we had lost during the week.

Q. That was all turned in?

A. This record was turned in every week, once a week.

Q. But, did you turn in every day what you had done?

A. Every day what I had done.

Q. That day. And that was your own count?

A. That was my own count, and that was often checked on.

Q. But, it was on that basis, it was your own count, wasn't it?

A. That is right.

Q. And you kept, day by day you kept it in a book?

A. That is right.

Mr. Nunneley: In view of your Honor's ruling before, we offer to proceed to cross examine this witness, and by using in such cross examination Exhibits 58 to 58-MM * * * to show that from this witness herself, that this witness has no claim in this case.

The Master: That is a very broad statement. I wish you would be specific as to the manner in which you intend to proceed on cross examination. I am not restricting you from using the cards to cross examine the witness. I restricted you on a specific method of cross examination.

What you want to do is to show the cards to the witness and ask her in the case of each card to make a computation of the number of hours that she claimed she worked in the given—or each week of the two-weeks' period shown on each card to determine whether or not on her computation there is overtime.

Mr. Nunneley: So that we may—and also for the purpose of having stricken from the record the cards which we maintain have been improperly admitted already.

The Master: Well, I will adhere to my previous ruling on that and not permit that type of cross examination. I am not preventing you from asking the witness about the cards, though, in other ways.

Q. (By Mr. Nunneley): By the way, witness, your pay week in your department started with what day?

A. On Tuesday.

Q. On Tuesday. I want to say to your Honor I ask that because my understanding is this department was

different from those we have talked about. I think the others were Wednesday.

The Master: Is that right?

A. That is right.

Q. (By Mr. Nunneley): And, ordinarily when you went in to work and punched your clock, the first one would be where on the card?

A. What do you mean, the first—

Q. Day?

A. On the time card?

Q. Yes. Where would it show the first day of your pay?

A. It has been quite a while since I worked there, but I think it was at the bottom.

Q. At the bottom?

A. I am not sure of that.

Q. Showing you Exhibit 58-K, the first entry would be at the bottom of the card, would be the first day of the pay, is that right, Tuesday, at the bottom (handing card to witness)?

A. That is right.

Mr. Nunneley: I understand your Honor to say I couldn't have these computed?

The Master: That is right.

Mr. Nunneley: Of course if we can't use the figures to ask this witness questions about—

The Master: If you occasionally have some specific purpose to have one card computed, I will permit that. I am ruling that you can not go through these cards one by one having the cards computed, shutting you off from too extensive a cross-examination. * * *

Q. I understood you to say, Mrs. Freddle, that you were permitted to use your own scissors?

A. Yes.

Q. Throughout the period?

A. Yes, I was asked to buy a pair from the department.

Q. But you didn't comply with the request, is that right?

A. That is right.

Q. You were not discharged for not doing it either, were you?

A. No.

(Discussion off the record as to production of time cards.)

(Time cards of Dorothy May were thereupon marked Exhibits 62 to 62-MM.)

(Time cards of Nicholas Dacho were thereupon marked Exhibits 63 to 63-FF.)

The Master: All right, go ahead, Mr. Nunneley.

Q. (By Mr. Nunneley): I believe I asked you if you knew of your own knowledge what the company paid for scissors that it sold to employees? • • •

A. Oh, I don't know what the company paid.

Q. (By Mr. Nunneley): No; do you know what the company paid for any of the articles which you purchased from them?

A. No, I don't.

The Master: Do you know whether your scissors worked as well as those furnished by the company?

A. I know as far as I was concerned my scissors worked good.

The Master: You don't know how the company's worked; you never used them?

A. Well, I used a pair after that once that I had broken my first pair. I used them for quite some time and the foreman let me use a pair and I was used to cutting with my own and I couldn't cut with them; I was cutting into the print.

The Master: It is largely a matter of what you are used to, isn't it?

A. I was accustomed to mine.

Q. (By Mr. Nunneley): They were not the same, then?

A. No, they weren't.

Q. They were different shape, were they, or different size, or something?

A. They were different size.

Q. So the foreman let you take the pair and give you time to go and get yourself a pair somewhere else, is that right?

A. It was just that one evening that I used them.

Mr. Nunneley: Take the witness.

Re-Direct Examination

By Mr. Lamb:

Q. Miss Freddle, will you advise us of the occasion when Mr. Doll called you into the office and asked you to drop this litigation?

Mr. Nunneley: Same objection. Just a minute. We made an objection to this matter yesterday. It was brought up with Mr. Doll, and your Honor ruled it out.

* * *

Mr. Nunneley (Interposing): As long as Mr. Lamb brought the subject up, I want to call the Court's attention to the fact that Mr. Doll was not called under the rule relative to adverse witnesses.

The Master: He wasn't?

Mr. Nunneley: No, sir.

The Master: Why?

Mr. Nunneley: Because no such statement was made at any time, either when he was called or at any other time, and in order to get him under the rule it is necessary to call him under the rule, or the statute, as we do in the state courts, which is the same practice. If we call them without getting them under there, he is your witness. We just throw that into the picture so your Honor can consider it, because that is the law and that is the rule.

The Master: I will have to see some authority on that. I assumed that Mr. Doll, being the general-manager of the company, was unquestionably being called as an adverse witness. I think he was asked leading questions, without objection.

Mr. Nunneley: That is all right, they could call him. They could call an adverse witness and so designate him if they wanted to.

The Master: I don't think the rule expressly states that they have to designate him as an adverse witness.

Mr. Nunneley: That is right, they may call him and they may do those things if they do it under the rule, but the ordinary rule is when you call a witness he is your witness and Mr. Doll is their witness anyhow.

Mr. Lamb: "A party may call an adverse party or an officer or director or managing-agent of a public or private corporation,"—

Mr. Nunneley: There is no argument as to that rule.

Mr. Lamb: "And interrogate him by leading questions."

Mr. Nunneley: I am not objecting to that at all.

The Master: I think with this one witness, and I am not binding myself as to what I will do with future witnesses, I think probably as to future witnesses I will look up the law over the adjourned period as to the admission of offers of compromise; I think with this particular witness I will exclude the evidence because it hasn't been shown to me it is proper, but I will take the witness' testimony under Rule 44, I believe, Subdivision "(" * * *

Mr. Nunneley: We may have an objection and exception?

The Master: Yes. Your objection is sustained as far as the admission of the evidence is concerned until such time as it is shown proper. * * *

Q. (By Mr. Lamb) Will you advise us whether you have ever been called into the office of Mr. Doll relative to this litigation?

A. I was called into the office, Mr. Trabue came up to me when I was cutting my print, and at this time he was not my boss. Mr. Ermie is my boss, or was. And I was cutting my print, and he asked me if I wouldn't come with him. And on the way to the office he asked me who I rode with, and I thought maybe he had a rider for me, I didn't know what I was being called into the office for. And the reason he asked me this was to see if this rider

had to wait, or something. That is my assumption. So he went into the office with me, and Mr. Doll, Sr., was sitting at the desk and he asked me to sit down, and he started out by saying that I have been a member of this happy family for a long time, and they have liked me and always have found me satisfactory, and asked me what I thought I had coming in back pay. And then I told him about putting in centers, how the girl was paid for it at the beginning and later we had to do the work. And he looked at Mr. Trabue and asked him if he knew about this, and he said, "No."

I said, "Mr. Trabue, don't you remember the girl that put the centers in worked right at the machine?"

And he couldn't recall. So then I told them about cutting print and there wasn't any questioning about that.

Then he said, "Would I have the evidence, the proof to my claim as to what I had coming in back pay, as to deductions and such, and I said I had. He asked me if I could present them. I said, "when the time comes, I will."

Then he showed me this list of names, of the wages and hours, and they were black with white words, the names were written out in white. He showed me my signature and asked me if it was my signature, and I said, "Yes," and he asked me if I signed that out of loyalty to my fellow-union members.

I says, "No, I signed it because I thought I had something coming for the charity work that I have done."

And he says that was all. So Mr. Trabue walked back with me. He said I could work a half-hour longer and stay and cut my print, and that was all.

Q. Did you have a discussion relative to being prosecuted for perjury if you didn't succeed in this litigation?

A. Yes, I forgot to mention that.

The Master: Is this a discussion with Mr. Doll?

A. Yes.

The Master: Wait a minute. Was there an objection to that?

Mr. Nunneley: He asked the witness the conversation. It is certainly suggesting questions, the witness has told the story and said "that is all."

A. Well, I forgot that. He did mention perjury. He said if I couldn't present proof, he said I would be putting myself to perjury, and he says, "That is quite an offense." Because that is when he asked me if I had the proof, and I said I did, and when the time came I would present it.

Q. (By Mr. Lamb, continuing): Do you have any idea when this conversation occurred?

A. Pardon me?

Q. Do you have any idea when the conversation with Mr. Doll occurred?

A. If you are referring to the month—

Q. (Interposing): Yes.

A. I don't know exactly. It was either September—I don't know if it was July, December or October; I mean, August, September or October.

Q. Of 1940?

A. 1941.

Mr. Cooper: If the Court please, I move that be stricken, the testimony the Court received on a separate record pursuant to Rule 43-C.

The Master: I would like to do this about that testimony. I have made a note here to look up the question of law relating to the admission of compromise statements. I would like to do that between now and the time we reconvene and decide whether it should be admitted.

I would also like, if counsel for the defendants are agreeable, to suspend cross examination on that until I have ruled whether it should be stricken from the record.

Mr. Nunneley: I was just going to say we would have to suspend cross examination of the witness on that subject until it is determined whether it is in this case or out.

* * *

Q. (By Mr. Lamb): Miss Freddle, can you tell us who does the janitor work in your department?

A. The girls themselves at the bench.

Q. The girls have to do the janitor work themselves. You don't get any piece rate for the cubic yards of cleaning up their plant for them, do you?

A. No.

Q. And you don't get any hourly pay for that?

A. No. When an inspection tour takes place, why, we have to do very good janitor work. In fact, we have to sweep the water off the floor, where it used to stand about a year ago so that the water wouldn't be in puddles, and climb up on top of our bench and wash off the lamp shades, scrape off the dirt underneath our racks with a scraper so when the inspection tour went through it was a very clean department. • • •

Q. You testified about your having deductions made from your pay, short-changed, or at least the computation of the products manufactured being paid for less than your total production. Do you know of any other girls who were treated in a similar way?

Mr. Nunneley: The witness should be instructed it must be of her own knowledge. • • •

The Master: Do you know of any other instances of that sort, and that means do you know of your own knowledge?

A. Yes. Bessie Nedeau.

Q. Bessie Nedeau. And, anyone else?

A. Irma Klem.

Q. Irma Klem. Anyone else?

A. Well, there were some that were short-changed, but I don't remember.

Q. Do you know of Alice Stoll having been short-changed?

A. Oh, yes. Alice Stoll. • • •

Re-Cross Examination

By Mr. Nunneley:

Q. During all the time that you were there, as I understand it, you only worked on three patterns. Is that what you just told Mr. Lamb?

A. Three patterns.

Q. Three patterns. So that over a period of five years, the matter of changing patterns only happened to you three times?

A. That is right.

Q. What was the name of this girl you were just talking about?

A. You mean this last one?

Q. Yes.

A. Betty Nedeau. • • •

Q. (By Mr. Nunneley): When did this affair we have been talking about happen: what time was it?

A. Of the year?

Q. What year and what time of the year?

A. It happened about, I think, two years ago.

Q. Two years ago in February, is that what you mean?

A. Well, I don't remember when this girl started.

Q. Then it was right after this girl started, is that right?

A. Yes.

Q. And so that whatever—

A. (Interposing): She was short on her fourth pay.

Q. Whatever happened was when she had been going there two or three or four weeks, is that right?

A. No, she had been there eight weeks.

Q. I see. Of your own knowledge, do you know anything about Alice Stoll being short, of your own knowledge I ask you now?

A. Yes, she told me. • • •

The Master: It is hearsay, I will strike it. I might explain to you that under the law the only thing that you can testify to is that which you observe yourself, conversations that you participated in and observed, not what someone else told you was done in their case.

Q. (By Mr. Nunneley): The other girl's name was Irma Klem that we were talking about?

A. Yes, sir.

Q. Of your own knowledge, do you know about that?

A. No, that is the same as Betty Nedeau.

Q. And did that incident that you have in mind, happen when she first started to work, too?

A. No, she has been there a number of years.

Q. When did that happen?

A. She just told me about it last summer.

Q. I asked you when it happened?

A. I don't know. * * *

Mr. Nunneley: Subject to the reservation of cross examination and your Honor's ruling, I presume this witness will be here then at the next hearing.

The Master: She will be here. Not the next hearing, but if I decide it is admissible, or it should be left in the record, then I will direct that she come back.

Any further examination of this witness?

Mr. Lamb: No, your Honor.

Q. (By Mr. Nunneley) Did you look for the constitution and by-laws of the Union; I think I asked you that this morning?

A. I never saw them, so I don't know where to look for them.

Q. You didn't make any search since yesterday?

A. I said I never saw them, so I didn't know where to look for them. * * *

NICHOLAS DACKO, was thereupon called as a witness on behalf of the Plaintiff, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Lamb:

Q. Will you give us your address?

A. I live at 29 North Avenue, Mt. Clemens.

Q. How long have you been an employee of the Mt. Clemens Pottery Company?

A. It was two years ago about the first of February I had my job there.

Q. That would be February, 1940?

A. 1940.

Q. In what department did you work?

A. The glost belt.

Q. And how long did you work?

A. Pardon?

Q. How long did you work; are you working up there now, or have you been out since the strike?

A. Yes; I was fired the 22nd of November, 1941.

Q. That is the occasion of the second strike out at the plant?

A. That is right.

Q. Do you know Bill Stief?

A. Yes, I know him; he is my foreman in the glost belt.

Q. Can you tell us whether or not you have ever had any conversation with Bill Stief relative to the time of reporting for work?

A. On the first day that I worked, Bill Stief had quite a conversation with me about the policy of the company, and one thing he told me was to punch in at 6:46 in the morning with the rest of the workers, and he spoke to me about it, I wasn't very prompt about it, because I didn't think it was right; once in a while when I missed up he spoke to me again. I remember one time that he told me to punch out about a quarter after, but not right on the dot, to be out before quarter after.

Q. Punch out at noon or in the evening at quarter after?

A. In the evening, that is right.

Mr. Nunneley: I suggest that the witness testify and not counsel.

The Master: When was it that you were supposed to punch out, at quarter after or just before?

A. In the evening quarter after four o'clock.

The Master: What about noon?

A. He didn't say anything about noon.

Q. (By Mr. Lamb) Did he advise as to the company policy in that respect of punching out 15—14 minutes after 4 o'clock?

A. He just told me that everyone else did it and I should do it, too.

Mr. Cooper: May the time and place of this conversation be fixed, if the Court please?

The Master: Will you fix the time and place the best you can?

A. The time of the first conversation was the day I first started to work.

Q. (By Mr. Lamb) Which was in February, 1940?

A. That is right, and I don't exactly recall the time of the second conversation; he came to me when I was on my job around four o'clock and he talked to me when I was grinding bats, that was during the first three or four months I was there.

The Master: What was the place of these two conversations?

A. One was in the sagger room of the Mt. Clemens Pottery, and the other was in the coat room.

The Master: The first in the sagger room?

A. The first in the coat room and the second in the sagger room.

Q. (By Mr. Lamb) Can you advise us whether you have in that plant what you call emptiers and unloaders on the glost belt?

A. Yes, that was the job I was transferred to later on. There are emptiers and unloaders.

Q. What are they, emptiers and unloaders of saggers?

A. Yes, we call the men who take the saggers off the car unloaders and the boys who take the ware out of the saggers which was my job just before I was fired, and the boys who sort out the ware as it goes on the glost belt, we call those emptiers.

Q. Can you advise us whether these emptiers or un-

loaders were ever required to come in on Monday mornings and work for some time before they punched in?

A. We were all required, unloaders and emptiers, to come in every morning—this was prior to the first strike—and put in about 15 minutes earlier than we usually were and work about 10 minutes unloading two cars, and go out and punch our cards, after the girls on the glost belt came in.

Q. How many employees would you estimate are in the glost belt department, to which you have been referring?

A. Well, there is about 12 or 15 emptiers, about 8 unloaders, and the girls that fill saggers, I guess there is between 40 and 50 of them. I am not sure. There might be more. But there is probably another 20 men that do miscellaneous work. • • •

Q. (By Mr. Lamb) Are you aware of any janitor work having been done by the people in your department after the production line ceased?

A. Well, on my job, before the first strike, and almost all the time I worked on the glost belt, I was required to stay after the belt had been shut down and clean up around the glost belt. There was myself and one or two other people that did that.

Q. And how long would this take you to do?

A. Well, it all depended on the work. Sometimes, it took me as much as 45 minutes to clean up.

Q. After cleaning up you went out and punched your clock, or before?

A. And in addition to cleaning up, we had a meeting every night to discuss chipped ware and broken ware.

The Master: In the first place, before you go on to the meeting, answer the question whether you punched out before or after you cleaned up?

A. It all depended whether the meeting was still going on. If the meeting was over with, I would go on and punch out. If it wasn't, I would stay until the meeting was over.

The Master: Did this meeting take place before or after the cleaning?

A. When I started cleaning up, the rest of the boys went to the meeting. Sometimes, I would get done before the meeting was over, and I would have to go over there.

Q. (By Mr. Lamb) Was this in the department you were in, about—

A. Yes, about ten of the boys.

Q. And then addressed by your foreman?

A. Bill Stief.

Q. And you discussed chipping, and so on?

A. Company losses in general.

Q. Were you paid for this janitor work, cleaning up and so forth?

A. No.

Mr. Cooper: Objection to that, as calling for a conclusion.

Mr. Lamb: There is no conclusion. I asked whether he got paid for it, or whether it was charity work.

The Master: Did you get paid for it specifically, other than what you may have gotten for doing your regular piece work?

A. No.

The Master: I don't have clearly in mind whether you punched out before or after this janitor work was done?

A. No, I stayed until after the janitor work was done. In that way—I can explain that, too.

The Master: Did you then go and punch your time card, or did you punch it before?

A. Sometimes I punched it and sometimes I didn't. It all depended how much time I had. If it was figured it would run over my 40 hours for that week, I was required to punch my card, If not, I didn't have to punch it.

The Master: You punched your card every night at some time, didn't you?

A. That is right.

The Master: The question is whether you punched it before or after this clean-up work took place?

A. After.

The Master: After the clean-up work took place?

A. That is right.

The Master: In every instance?

A. Well, there were a few that I—in the few instances I punched out and then came back and cleaned up, but they weren't very frequent.

Q. (By Mr. Lamb) How long did these meetings usually take?

A. Oh, at least 15 minutes. Sometimes they would take us upstairs and we would be in there an hour and a half or two hours, discussing the company's policies and unions and such.

Q. Who would those meetings be addressed by?

A. Bill Stief. • • •

Q. Did you get paid for the first day that you worked there?

A. No. I did not. I was especially instructed not to punch my card that day by Bill Stief, my foreman.

The Master: What did you do that day?

A. I ground bats. I started to work about 9 o'clock in the morning and the boy taught me how to do the job, and I went home for dinner in the afternoon. I took over the job myself, and I worked on it for the rest of the day.

The Master: Without anyone advising or directing you?

A. That is right.

Mr. Cooper: I move that be stricken, if the Court please. • • •

The Master: It might come under the claim of beginners getting less than the minimum they were entitled to. If it just pertains to one day, I think I will leave it in.

Q. (By Mr. Lamb) Are you aware—can you advise us as to the status of the men who unloaded saggers staying until the cars were cleaned up, and any janitor work done on Fridays?

A. That was in the department which we were work-

ing hand in hand with, and those men as well as the emptiers had to stay until all the cleaning up was done on Saturdays and on—or, Friday, and all the cars were squared off on the Friday night as a finishing touch of the work for the week, and the men had all to stay until those cars were all squared off, and everything on the belts was cleaned up, and swept up and everything, and the girls also had to come back in at night after they had punched the cards, and clean up around their benches.

Q. Are you aware of the girls in the glost belt ever having to come back and clean up on Friday evenings?

A. That is right. They did it every Friday evening.

Q. After they had punched out?

A. After they had punched out.

The Master: Were you in the glost belt department?

A. Yes, sir.

The Master: Is that the department that has the saggers?

A. That is right.

Q. (By Mr. Lamb) Are you able to give us any information relative to employees being docked for arriving late?

Mr. Nunheley: That is a matter that, I think, the witness should be instructed the same as the preceding witness, to testify only to matters which he knows of and of which he has knowledge. . . .

The Master: In answering that question, the only information you can give is what you know of your own personal knowledge. . . .

The Master: Do you know of any instance where employees actually were docked? I think that was the question Mr. Lamb was asking.

A. I don't know of any instances where they were.

The Master: Were you ever docked yourself for arriving late?

A. No, I wasn't.

Q. (By Mr. Lamb) Did you ever see Charles E. Doll, Jr., start the glost belt up as much as 10 or 12 minutes before 7?

A. Yes. I saw him do that quite often. It was his practice prior to the first strike. He made it a point about 10 minutes to 7 to be right at the master switch and start up the entire glost belt.

Q. Did you ever see any employees run for the time clocks so that they could get over there by the time the thing started up?

A. I saw the belt start up a good many times myself, and I had to run to my position at the belt.

Q. As much as 10 or 12 or 14 minutes ahead of time?

A. That is right.

Q. Ahead of 7.

Mr. Nunneley: It would be well to have the witness testify occasionally, now.

Mr. Lamb: He is doing very well.

Mr. Nunneley: I'll say he is. He'll agree to anything you suggest. I will agree to that.

The Master: Confine your statements to objections to the questions, Mr. Nunneley.

Q. (By Mr. Lamb) Were you in on any of these happy family meetings addressed by Mr. Charles Doll, Senior?

A. I believe I was at one last November, 1940, I believe it was.

The Master: Last November, 1940? Last November, or a year ago November?

A. 1940. It was a year ago. * * *

Q. (By Mr. Lamb) I will hand you first Exhibit 63-J and call your attention to an item No. 6 thereon, and ask you if you will explain to us what that indicates (handing exhibit to witness)?

A. Do you mean here, I punched in at 6:49, and punched out again at 7 o'clock.

Q. Yes. * * *

Q. (By Mr. Lamb) I call your attention specifically to Exhibit 63-J, the item 6 I think it is of that card, and ask you if you will explain what that indicates?

A. It showed I punched in at 6:49 in the morning, and reported for work, and the foreman sent me home for some reason or other at 7 o'clock.

Q. Did you get paid for that time?

A. No, I did not. It was just crossed off the card.

Q. That is, there is no computation of time showing on the right-hand column?

A. That is right.

Q. Of the time spent?

A. That is right.

Q. In or about the plant. How long does it take you to go from the time clock to your department or bench?

A. Oh, about a minute or two. It is right near the time clock.

Q. Well, approximately how far would you say?

A. Well, within 125 or 150 feet. * * *

Q. (By Mr. Lamb) I call your attention to Exhibit 63, the first exhibit of this lot, and ask you if you can advise us what these various markings on the column next to the last indicates, and also what "glost belt—Stief" means?

A. This looks like—

Mr. Cooper: (Interposing) Just a moment. I object unless there is something further showing the witness put those marks on the cards, or was there when they were put on or knows something about them.

Mr. Lamb: I am going to find out what he knows about it.

The Master: I will have to, I guess, take an answer to it. I will let him answer.

Mr. Cooper: I think a preliminary question should be asked first.

The Master: It is rather difficult to ask him first what is the basis of his knowledge, unless I know what he knows about it. I will take the answer and then find out what he knows about that.

Q. (By Mr. Lamb) Is that your first time card (indicating)?

A. Yes, and it is just as it was when Bill Stief took it out, excepting the markings on the back which have been erased. Glost belt is what I worked on: Stief is my fore-

man; my name is up above, and these markings here (indicating) are my hours.

The Master: Now you are pointing to the right-hand column where the figures have been written in ink.

A. The ink shows the hour rate, I believe, and the red is piece-work rate; these are all red—blue, rather, and these (indicating), I was told these are the serial number, or number of the job.

The Master: Just a minute, get this in the record. The last statement you made was referring to the markings under the last column—the second from the last column headed "Extra out," is that right?

A. That is right.

The Master: Who told you that that was the meaning of those?

A. I don't know. * * *

Q. (By Mr. Lamb) Well, could you enlighten the Master as to the meaning of Exhibit 63-Q, and referring particularly to item 6 thereon?

A. I believe this card shows one morning that I reported in at 7 o'clock—7:43, was sent home at 7:45, reported back in again at 11:02, worked until 12:05, reported back in at 12:48, worked until 4:08.

Q. And the company's computation of your time for hours worked—

A. Was 3¾ hours.

Q. I notice on Exhibit 63-D the fact that you reported for work each morning in that two-week period at 6:47 A. M., except the very last item, which is 6:46, is that correct?

A. That is right.

Q. And that irrespective of the time checked out in the evening and the time checked out at noon and back from lunch, you are given credit for 8¼ hours worked every day during that two-week period?

A. That is right. * * *

Q. (By Mr. Lamb) I am calling your attention to Ex-

hibit 63-K, I would like to ask you what item 6 indicates there?

A. It shows I punched in at 6:49, I believe it is; punched out at 7:35, and received credit for one-half hour's work at the day rate. * * *

Mr. Lamb: Well, we offer Exhibit 63.

Mr. Cooper: We have the same objection to Exhibit 63 that we had to the other time clock cards.

The Master: All right, the same ruling, and I will admit that.

Mr. Lamb: That is all for direct examination at this time.

Cross Examination

By Mr. Cooper:

Q. How old are you?

A. 20 years old.

Mr. Cooper: If the Court please, I move that all the testimony be stricken, and that the name of this individual as a party be stricken from the record here.

The Master: Because he is a minor?

Mr. Cooper: He is a minor. * * *

The Master: As long as he has filed a designation in accordance with the procedure prescribed by Judge Picard, I think that I should not strike the testimony on that ground. I think that should be up to Judge Picard on proper motion made before him. * * *

Q. (By Mr. Cooper) Are you working now?

A. No, I am not.

Q. Have you been employed since the time you left the Mt. Clemens Pottery?

A. I haven't been employed since I have been discharged by Mt. Clemens Pottery Company.

Q. When was it you said you went to work for the pottery?

A. In February, 1940.

Q. Remember the date?

A. I don't remember the date, but I know it was at the beginning of the month.

Q. Do you know the day of the week when you first went to work for them?

A. No, I don't.

Q. You say it was the beginning of the month, is that right?

A. That is right. It was probably on a Monday.

Q. You think it was probably on a Monday?

A. Yes.

Q. And what was the last day that you worked there?

A. I think it was November 21st.

Q. November 21st?

A. 1941.

Q. 1941?

A. Yes.

Q. That was on a Friday?

A. Yes, it was.

Q. Now, that day you shut down the power so as to stop the belt conveyor system, did you not?

Mr. Lamb: Objection. * * *

The Master: I think if you have some definite purpose in view, I will let you go ahead and ask the question, subject to the right of counsel for the plaintiff to move to strike, if after you have asked the line of questions, the questioning does not appear to be competent. * * *

Q. (By Mr. Cooper) I ask you whether or not on November 21st, 1941, in the afternoon you held your hands on the "stop" position of an emergency switch, thereby stopping the belt conveyor—

Mr. Lamb: (Interposing) Objection.

Q. (Continuing) —before work was done?

Mr. Lamb: Objection.

The Master: I will overrule it until I know what the purpose is. * * *

The Master: Answer the question.

Mr. Lamb: I assume it calls for, what is it, a yes or no answer? Whatever the Master wants.

Mr. Cooper: Suppose we let the witness answer it.

The Master: It is not what I want out of the question. The question was asked. Let the witness answer it. If he cannot answer it yes or no, he can say so.

Mr. Nunneley: You need not look at Mr. Lamb for the answer. • • •

The Witness: What is the question again?

The Master: Will you read it back, please?

(Question read.)

A. I did. • • •

Q. (By Mr. Cooper) Did your foreman tell you to take your hands off the switch?

Mr. Lamb: Objection.

The Master: Overruled.

A. I don't see why I should answer that and jeopardize about $400 I have coming in the National Labor Relations Board case.

Mr. Cooper: I ask that the witness answer the question.

• • •

The Master: I think I will overrule the objection and ask that the witness answer the question.

(Question read.)

Mr. Lamb: There is an objection and the witness said he didn't believe he ought to answer the question, and I ask that the Master instruct the witness about his rights to answer this question.

Mr. Nunneley: The Master should instruct him what to do that is right.

Mr. Lamb: On the basis it is an immaterial matter.

The Master: If I rule a question is proper, the only instruction is to answer the question, unless you should advise him not to answer, and then he would be subject to the penalty for not answering the question that was ruled to be proper. • • •

(Short intermission.)

(Mr. Lamb talks with the witness, showing the witness a blueprint.)

Mr. Nunneley: Just a minute. We have the witness, if the Court please, we don't need counsel over there, and object to that.

The Master: I don't think you had better go over that with the witness while he is on cross examination by the other party. • • •

Mr. Nunneley: Let the record show that counsel, in spite of the Court's order, carried on a conversation with the witness. • • •

The Master: I think I will make the ruling that this question goes to the credibility of the witness, not to an issue directly under the Wage and Hour Act, but rather simply to his credibility, and therefore I overrule the objection and direct the witness to answer the question. Can you re-state the question?

(Question read.)

Mr. Lamb: There is an objection to it.

A. (No response.)

Mr. Nunneley: You don't have to look at Mr. Lamb.

The Master: That is improper, too, to make a comment toward the witness. The question is asked.

Mr. Cooper: If the Court please, I ask that the witness be directed to answer.

The Master: He is directed to answer. I will give him whatever time he needs to answer.

A. (No response.)

Mr. Cooper: Witness, did you hear the question?

A. Repeat it, will you?

Mr. Cooper: Let it be repeated, please.

(Question re-read.)

A. (No response.)

Mr. Cooper: I repeat my request to the Court to instruct the witness to answer the question.

The Master: Can't you answer the question? Did the foreman—he either did or he didn't.

A. (No response.)

Mr. Cooper: I repeat my request that the witness be instructed to answer.

The Master: Will you please answer?

A. We adjourn at five o'clock, don't we?

The Master: You will have to answer the question. I don't adjourn with a question pending, I am sorry to say.

Mr. Lamb: To allay the fears—

A. (Interrupting) We will know all the answers Monday.

The Master: That is right, you have your right to object. The question now having been ruled upon, the witness must answer the question now.

A. I did not hear the foreman say, "Take your hands off the switch."

Q. (By Mr. Cooper). Did you hear the foreman say anything else at that time?

Mr. Lamb: Objection, objection. What else the foreman might have said, he might have said a thousand things that didn't have anything to do with this case.

Mr. Cooper: To save time, I will ask another question, if the Court please.

Q. (By Mr. Cooper). Your foreman at that time was Mr. Stief, was he not?

A. Yes, he was.

Q. Isn't it a fact that Mr. Stief shoved you to one side and turned on the switch?

Mr. Lamb: Objection.

The Master: I will overrule it.

A. Yes, he shoved me to one side and turned the switch back on.

Q. What did you do?

A. I just—

Mr. Lamb: (Interposing) Objection. What did he do? now, what's that—

The Master: I have overruled the objection. Once I have ruled the incident is open to be inquired into. I am

not going to shut off a question until that has been gone into thoroughly. What did you do?

A. I just left that part of the department.

Q. (By Mr. Cooper) Where did you go?

A. I went down to the ware sorters.

Q. As you went out, you called to others to go out with you, did you not?

Mr. Lamb: Objection.

The Master: I will overrule it.

A. (No response.)

Mr. Cooper: Answer the question. Will the Court so direct, if necessary? * * *

A. I don't remember exactly what I said to the employees. * * *

Q. Do you remember whether or not you told them to come out with you?

A. I may have.

Q. Now, what department was it that you first started work in?

A. I worked in the glost belt department all of the time excepting part of my job on the glost belt department took me to other departments.

Q. Now, you started in in February, 1940, is that right?

A. Yes.

Q. And was your job, then, in February, 1940, working on the glost belt?

A. My job in 1940 was bat grinder when I first started.

Q. When you first started you were a bat grinder?

A. That is right.

Q. What department is that in?

A. That was called the glost belt department. It was one of the jobs in connection with the glost belt.

Q. Just what does that job consist of?

A. The bats are things that are made for the cups to rest on in what we call the long deckers in the pottery. They are about a quarter of an inch thick or probably an inch—I mean between a half-inch thick; some are 12 inches

square or so, and others are about 8 inches wide and 18 to 20 inches long, and on these bats there is a top layer put in the sagger where the cups rest when they go through the glost kiln, and at intervals a mixture was put on these bats, and after the mixture had accumulated for quite a time it was my job at that time to grind it off so that more could be put on.

Q. How many others were working at that job in February, 1940?

A. I was the only one on that job.

Q. You were the only one on that job. Now, how long did you keep on that job?

A. For 3 or 4 months.

Q. For 3 or 4 months on that. And, that would be along about June of 1940; June or July of 1940 that you changed to another job?

A. Yes.

Q. And what did you do then?

A. I was transferred to the glost belt to work as a ware sorter.

Q. You worked as a what?

A. Ware-sorter, an emptier. It is one of the jobs called, one of the jobs classed in that.

Q. Now, in doing that work were you working right alongside of the moving glost belt?

A. Yes.

Q. And just what does the emptier do?

A. Well, when the sagger comes around, the saggers come around on the glost belt. There is one man that stacks the cups and takes the caster off, and then there are five men in a position where they empty the ware, and then further down there are men who sort the ware that come out of saggers. They sort it so that the girls down the chipping belt can load it easy, and there are four men on that, and I was down at the end sorting the ware.

Q. You were sorting the ware?

A. Yes.

Q. What were the names of the others who were sorting the ware with you?

Mr. Lamb: Objection.

The Master: I will overrule it.

A. I don't know the names exactly, but I can name them. All those jobs seem to be hand in hand, and I don't remember any definite names, but I can remember names of the boys on the belt.

Q. Can you remember the names of any of the boys who were working with you in this sorting job?

A. Joe Smith, Byron Hagen, Orville Zorn, Henry Pietrzak. That is all I can think of.

Q. Now, did you have another job after that?

A. I was transferred up to the other end to help the boys empty.

Q. When was that transfer?

A. I don't know. I wasn't very long on this job. Two or three weeks on the sorting job, and then I was moved up there.

Q. You were on the job for only two or three weeks?

A. That is right.

Q. Well, then, you were moved up with the emptiers?

A. That is right.

Q. That would be along sometime in the summer of 1940?

A. Yes.

Q. And how long did you stay at that job?

A. Well, I worked right up there on a job as an extra man on the entire belt, until the time I was discharged.

Q. You were working as an emptier?

A. As an emptier up till the time of the first strike.

Q. Up until April, 1941, and then after that you say you were sort of an extra relief man?

A. No. First of all I was put back on sorting for a few weeks.

Q. Yes.

A. And then I was moved off of that as an extra man, relief man, and everything else, on the entire belt.

Q. Now, when you were working as an emptier, how many other emptiers were working with you?

A. Four.

Q. Who were they?

A. Lloyd Trombly, Fritz Rheinhold, Bill Kepsel, Harry Lozon.

Q. Now, as I understand it, in this last period you more or less worked all around the glost belt department?

A. That is between the time of the first and second strike.

Q. Between the time of the first and second strike; prior to April, 1941, the people that you worked with were these 8 people that you have named?

A. That is right. There were more, too, but I can't remember them.

Q. Did you know an Earl Trombly?

A. Earl Trombly? Yes, I knew him.

Q. Did you work with him?

A. No, I didn't.

Q. Did you know a Floyd Pearl?

A. Yes, I knew him.

Q. Ever work with him?

A. He is in the unloading, which is—I did not work exactly with him. Probably for 15 minutes or so we were working alongside of each other.

Q. Did you know Norman Harms?

A. Yes.

Q. Did you work with him?

A. In the same relation that I worked with Floyd Pearl.

Q. Did you know George Houtoff?

A. George Houtoff? No, I didn't; I knew him, but I didn't work with him.

Q. Did you work in connection with any of the girls working along this glost belt?

A. No, I didn't.

Q. Your job most of the time was just either emptying ware or else acting as a sorter?

A. That is right. • • •

June 8, 1942

Q. You were hired, I think you said, in February of 1940?

A. Yes, sir.

Q. And your first job was that of a bat-grinder?

A. That is right.

Q. You kept to that job until the late summer or early fall of 1940?

A. You see, I was on that job approximately four months.

Q. Can you remember what month it was that you shifted to another job?

A. Probably in June.

Q. You are quite sure that it wouldn't have been later than June?

A. No, sir, it couldn't have been any later than June.

Q. Then your next job was that of a ware sorter and emptier, is that right?

A. Yes, sir.

Q. And you continued in that job as long as you remained in the employ of the pottery?

A. That is right.

Q. Now, during this earlier period when you were a bat grinder, you didn't spend all of your time every day grinding bats, did you?

A. With the exception of probably four or five hours, I spent practically all of the first three and a half or four months grinding bats.

Q. You mean three or four hours a day?

A. No, three or four—about five hours in the entire time.

Q. You mean that every day with that one exception you would spend all of your time grinding bats?

A. Yes; for about the first three and a half months, I would say.

Q. A bat is a sort of a flat slab of some composition material on which cups were placed, was it not?

A. Yes, sir.

Q. And the grinding process was to remove an accumulation which built up on the top of the bat, is that right?

A. Yes, sir.

Q. And you had some kind of a power machine to do that?

A. Yes, sir.

Q. About how many bats would you grind a day?

A. I would say I averaged 450, 500 sometimes.

Q. There were always that many bats available.

A. Yes.

Q. On which grinding was required, was there?

A. Well, there were at least 400 every day. I would say I averaged 450 bats a day.

Q. Did you ever clean up all the bats on hand at the close of a day?

A. Well, probably after the first three and a half months, I did it. I think they started to use some different system on the bats.

Q. Sometimes you would get all the bats cleaned up at the end of the day?

A. Yes, sir, then I would have other work to do, clean up and such.

Q. In that case, when you came back the next morning would you ask Frank Jolly or Bill Stief what work you should start out on?

A. I always could find something to do on the bats; there was always work to do back there, clean up or else grind bats.

Q. Well, if you had the bats all ground at the end of the preceding day, and had it cleaned up, you would have to get some other job for the next morning, would you not?

A. I can't say that I ever remember of being that far ahead in my work.

Q. Isn't it a fact that a bat grinder is really a general utility man job and that you would work at one thing or another, according to what your foreman told you to do?

A. It wasn't at the time.

Q. Well, that is a job which is very often given to a fellow when he is hired in the glost belt department, isn't it?

A. Prior to the time I was there the bat grinding job was a utility man, but when I started I think the company just put me on there to grind bats all the time, and they generally had enough bats to keep me busy practically all the time for the first three and a half months.

Q. You say before you were hired the job of bat-grinding was a job of kind of a utility man?

A. Yes, from what other boys told me on the belt, it was.

Q. And then after you went on to another job, was it again a utility man job?

A. Shortly after, it was.

Q. You were about the only bat grinder who was ever there and spent all the time grinding bats?

A. Yes, that is right.

Q. As a matter of fact, they stopped grinding bats altogether, didn't they, used a new process which eliminated the necessity of grinding bats?

A. Yes, I believe they did.

Q. And you are quite sure that every morning during this period you would go right over to that room where you ground the bats?

A. Yes, sir.

Q. You are quite sure, are you, that you wouldn't have to ask one of your foremen what job you should start out on when you got down there in the morning?

A. That is right; I always had work to do back there, if that is what you are driving at, I always had bats to

grind for the first three and a half months, I would say, there was always work to do back there, if they were using a new system or wasn't, in those bats there was a tremendous amount we have had to grind, or I had to grind.

Q. If it wasn't grinding bats it would be something else for you to do?

A. For the first three and a half months I ground bats and for the last two or three weeks I was on that job they moved me on the belt.

Q. I say, if you didn't grind bats, as I understand you, there would be something else for you to do back there, is that right?

A. Just to clean up.

Q. And you are sure that during this first three or four months you spent all your time either grinding bats or cleaning up that bat grinding room, is that right?

A. That is right.

Q. Would you say that Frank Jolly never met you in the morning and told you what job to start out on that day?

A. I don't believe he did. I think there was one other job I did. That was just on one or two occasions, though. They have a big mud hole where they have, I don't know, some kind of mud or dirt, or water, that accumulates in the glaze room. It was a very heavy job, and they put me on that for a day. I was sick for about three days after. They took me off of my bat grinding job, and I don't know why they didn't put a heavier man in there. I had to push a wheelbarrow all day.

Mr. Cooper: I move the last part be stricken.

The Master: Read the question and answer back.

(Question and answer read.)

The Master: I will leave that in. That is unresponsive, I recognize, but the witness previously said he did bat grinding and also cleaned up, and did nothing else, and he now recalls he did another job, so I think he is entitled to correct his previous testimony.

Q. (By Mr. Cooper) Who told you to do that job, if you remember?

A. I think it was Bill Stief.

Q. Bill Stief did occasionally direct you to do some particular job or other that you should do?

A. I was the only one for the first three and a half months, and then after that the bats started coming in a little slower, and he told me wherever I had extra time to go over on the belt, and help other boys.

Q. Did Frank Jolly ever meet you in the morning, and tell you what job to start out on during this early period when you were a bat grinder?

A. I don't believe I had any connection with Frank Jolly at all during that period.

Q. Were there any other foremen or assistant foremen who put you on particular jobs other than bat grinding?

A. No, there weren't.

Q. During this period when you were a bat grinder, did you come in Monday mornings and load up the glost belt?

A. Let me see, I think during that period, I believe I came in at my regular time, on my bat grinding job.

Q. It was after you were transferred over to the glost belt that you would come in with some of the other glost boys on Monday to help get the belt lined up, is that right?

A. After—I guess it was about three and a half months—Bill Stief told me to come in Monday mornings before I punched my card, and help unload a few of the cars I was supposed to work.

Q. That was about the time you were moved over on to the glost department job?

A. Just prior to that time.

Q. When you were in the glost department you would come in earlier on Monday mornings to help load the belt?

A. We were all instructed to come in, I guess it was half past before they punched their cards, and unload I guess it is two and a half cars, and then we would go out again.

Q. As a matter of fact, you used to punch the time clock earlier Monday mornings than on other mornings, didn't you?

A. Let me see, we would come in at halfpast six, unload a few of the cars, and then we would have to go out and wait until 14 minutes to, and the girls would go through and punch their cards, and we would come in right behind them. We worked the same number of hours, I believe, Monday, than the other days, but we would come earlier.

The Master: Did you come earlier than on the other days?

A. Yes.

The Master: Did you punch the clock earlier?

A. I don't believe we did.

Q. (By Mr. Cooper) You are quite sure you didn't?

A. I am quite sure.

Q. You are quite sure on Monday during the time you were on the glost department, you would punch in the time clock the regular time?

A. Yes, sir.

Q. That was between 14 minutes to 7 and 7 o'clock?

A. Yes, sir.

Q. The same time as the girls in the glost belt department did it?

A. We used to punch in right after the girls.

Q. They would all be punched in before you would, is that right?

A. Yes, sir.

Q. During this period when you were emptier and ware sorter—let me ask you, emptying consists of picking the dishes out of saggers on the belt, does it not?

A. Yes, sir.

Q. At that stage, the saggers, which, by the way, are earthenware containers on which the dishes are contained while they are in the kilns, is that right?

A. Yes, sir.

Q. And after they came through the kiln, the saggers would be placed on the glost belt, is that right?

A. That is right.

Q. And the job of emptying was removing the dishes from the saggers, is that right?

A. Yes, sir.

Q. And was the job of sorting them, the placing of these dishes, after you take them out of the saggers, in various boxes?

A. Yes, sir.

Q. Were those boxes on the glost belt, too?

A. Yes, sir, they ran from the glost belt to the chipping belt.

Q. Then after the ware was sorted, you would go over to the chipping belt, is that right?

A. That is right, sir.

Q. Now, were there some days during this latter period, that you would be doing both emptying and sorting?

A. All the time I was at the plant—I was moved around quite a bit; I was never on one job.

Q. In fact, you worked as sort of an extra man all over the glost belt, didn't you?

A. Yes, sir, most of the time.

Q. Would you say all of the time you were there?

A. Oh, there would be times probably for a month, or two or three weeks, or something like that, that they might keep me on one job steady. I was extra man first of all on the emptiers, and then after a while I was extra man on the whole belt.

Q. In fact, you were kind of an extra man all the time you were working at the pottery, were you not?

A. That is right. That is what you could call it, I guess.

Q. Different days you would do different jobs?

A. That is right.

Q. Going back again to the latter period, did you start out at the same place every morning, or did you start out different places different mornings? I mean, different places along the glost belt?

A. Well, when I was extra man over on the emptiers'

end, I always started off at the same position every morning.

Q. How about the other times?

A. I would just start out anywhere where they needed a man.

Q. How would you know where they needed a man?

A. Oh, my boss just generally left it up to me, I guess. He would never tell me, "You go there and work," or "You go there and work." As long as the belt was operating smoothly that is what my responsibility was most of the time.

Q. If the belt was operating smoothly and no extra man was needed, you would simply stand by, would you?

A. No, sir, I helped the emptiers. The more men we had up on the emptying end, the better control we had over the ware and the less chips we would have.

Q. Then is it your statement that when you arrived at the plant, you would look about and see whether somebody was missing on the belt, so that you would have to fill in?

A. That is right, sir.

Q. That would be the first thing you would do?

A. That is what my job consisted of the last two or three months I was there.

Q. And if everything was running smoothly, you would usually start in helping the emptiers, is that right?

A. That is right.

Q. Before that last two or three months, you were always working more or less as an extra man, were you not?

A. I was working on cups and sorting cups out and I was emptying.

Q. You would frequently do some sorting and some emptying on the same day, would you not?

A. Not very often, though, not before that last probably 3 months.

Q. Were there other jobs that you would fill in on in addition to emptying and sorting?

A. No, sir, I stayed in the glost belt all the time.

Q. Are there any other jobs on the glost belt besides emptying and sorting?

A. Probably on one or two occasions I put bats in saggers on my day off, but that is all.

Q. How would you know whether to start emptying or sorting on particular days?

A. Well, I had been working there long enough to know just exactly what to do; if everything was going smoothly on the emptying end, I mean on the sorting, I would help the emptiers, and the more men you had up at the emptying end, the more the sorters would do.

Q. Even before the period of the last two or three months you used a certain amount of judgment to decide whether you would be emptying or sorting on a particular day, is that right?

A. What do you mean, prior to the last 3 months?

Q. Yes.

A. Well, I was either emptying or prior to that time I was generally put in one position until I was moved off by Bill Stief.

Q. I understood you to say a moment ago that to decide whether you would start out emptying, or start out sorting, you would see where a man was needed?

A. That was the last 3 months, sir.

Q. You say now before the last 3 months that situation wasn't true?

A. That is right, sir.

Q. During the period after you ceased to be a bat grinder, and before this last 2 or 3 months, then you always had a particular job to start out on, on a particular morning, is that right?

A. That is right.

Q. And it might be either sorting or emptying, is that right?

A. That is right; I had a steady position during that time most of the time.

Q. I say, it might be either sorting or emptying on a particular day?

A. Yes, sir, it might have been either.

Q. Would it necessarily be the same thing that you had been doing the afternoon before?

A. It very often was.

Q. But sometimes it was not, is that right?

A. That is right, sir.

Q. It would depend on what the foreman told you to do the particular morning?

A. Yes, sir. * * *

Q. (By Mr. Cooper) How far would you say it was from the time clock where you punched in, to the room where you did your bat grinding?

A. Probably six or seven hundred feet.

Q. You don't think it was any further than that?

A. It could have been, possibly.

Q. What would be your outside estimate, in distances?

A. My highest?

Q. Your highest.

A. I wouldn't say it was any more than 750 feet.

Q. You are quite sure it wasn't more than 750 feet?

A. Yes, sir.

Q. You think it might have been less than that?

A. It could have been considerably less.

Q. Well, between what ranges would your estimate vary?

A. I would say my best estimate of it would be between six and seven hundred feet.

Q. Between six and seven hundred feet. And, then, as to the point you indicated on the Exhibit 30-A where you did the glost unloading, how far would you say that was from the time clock?

A. Oh, probably 200 feet or 300 feet.

Q. You think that would be probably two or three hundred feet?

A. Wait a minute. I think it would be 200 feet.

Q. You think only about 200 feet—

A. Yes, sir.

Q. —on giving further reflection. Now, there were other jobs along the glost belt in addition to that of unloading and sorting ware, were there not?

A. Yes, sir.

Q. For example, there were some boys who would load the saggers and put them on the belt and push them in to the girls, is that right?

A. Yes, sir, the sagger pushers.

Q. And there were other jobs, too?

A. Yes, sir. Several other.

Q. What were they?

A. There were the waterers, unloaders, and emptiers, boys who put bats in the saggers, the men who put the fluid on the bats that had to be ground off every time they came out of the kilns.

Q. Did you work on all those different jobs?

A. I just worked at bat grinding and putting the bats in saggers, and emptying, and sorting out the ware.

Q. There weren't any other extra jobs you filled in on?

A. Excepting an odd job that came along probably on a Saturday morning—or—but, that would be hard to recollect right now.

Q. Was the general procedure that some boys would load the saggers on to the belt, and that the saggers would be pushed in to the girls, and the girls would place ware in the saggers, and then after going through the kilns, the saggers would come back on the belt for unloading?

A. Yes, sir.

Q. Is that right?

A. That is right.

Q. And the sagger loaders or sagger pushers, would be working on the same belt as you were working on, is that right?

A. Yes, sir.

Q. It was all one belt?

A. All the glost belt. Then there were several belts that made up the glost belt.

Q. But it was one continuous moving belt?

A. That is right.

Q. So far as its actual operation was concerned?

A. Yes, sir.

Q. And when it started out in the morning, operations would start up at the same time all along the belt, would they not?

A. Oh, on every morning except Monday mornings.

Q. On every morning except Mondays. Was that because on Friday night the glost belt had been all cleaned off?

A. That is right, sir.

Q. Now, operations couldn't start with only a few people along the belt, could they?

A. Well, on Monday mornings, we always started up at—I guess practically every one was there excepting the girls. All men.

Q. And on other mornings they would all be there, including the girls?

A. The girls would go in first, and the men would go in right after them.

Q. I say, on mornings other than Mondays, all the girls would go in about the same time, is that right?

A. Yes, sir.

Q. In fact, to operate the belt, most of them had to be there, is that right?

A. That is right.

Q. If only half of them were there, you probably couldn't operate, could you?

A. Well, I guess you could operate it all right.

Q. It wouldn't work very well?

A. No, sir, not very well.

Q. Now, during the day you would sometimes relieve a boy who wanted to leave the department, would you not?

A. Yes, sir.

Q. Would that only be on instruction of a foreman, or would other boys on the belt ask you to relieve them?

A. In the last 3 months, that was one of my jobs. One of my jobs was to relieve the boys once or twice a day to go to the rest room.

Q. If the boy asked you to relieve him and you had time, you would do it, is that right?

A. Yes, sir.

Q. But is it also right you would sometimes tell him you were too busy, and besides he had been relieved only a few minutes before, is that right?

A. Yes, sir.

Q. Some of the boys would like to take relief periods as often as they could, is that right?

Mr. Lamb: Objection to that question.

The Master: I will take his answer.

A. I don't know about that. I never had very much trouble with them. Probably once or twice a day is all the more I ever relieved them.

Q. But, as you said, there would be times when you would protest to a boy that you had given him some relief just a few minutes before and you were too busy to let him go away again, is that right?

A. Oh, there would always be monkey business like that around. It is like that everywhere.

Q. At least it was true at the pottery?

A. Yes, sir.

Q. By the way, was it every Monday that you came in to help load the belt, or was it every other Monday?

A. Every Monday.

Q. You are quite sure of that?

A. Yes. After the first three and a half months, I would say.

Q. You are quite sure that the situation was not that you would come in early one Monday and not the next, is that right?

A. No, sir, we never did it that way.

Q. Showing you Exhibit 63-R, being your time clock card for the pay period ending October 15, 1940, can you say what time you punched in the first Monday on that time clock card?

A. 6:31.

Q. And what time did you punch in on other Mondays on that time clock card?

A. 6:31.

Q. Was there any other day that you punched in between 6:30 and a quarter to 7 on that time clock card?

A. No, sir.

Q. Showing you Exhibit 63-S, your time clock card for the period ending October 29, 1940. Does it also appear that you punched in early on both Monday mornings?

A. Yes, sir.

Q. That was at 6:32 and 6:31 respectively?

A. That is right.

Q. Was there any other day during that period that you punched in prior to 6:46?

A. No, sir.

Q. Is the same thing true on Exhibit 63-T, your time clock card for November 12, 1940?

A. That is right.

Q. Is the same thing true on Exhibit 63-U, your time clock card for November 26, 1940?

A. Yes, sir.

Q. Is the same thing true for Exhibit 63-V, your time clock card for December 10, 1940?

A. Yes, sir.

Q. And also Exhibit 63-W, your time clock card for December 24, 1940?

A. That is right.

Q. And also the next one, Exhibit 63-X?

A. That is right. Let's see some of these cards prior to this time.

Q. You still say, do you, that you always went in Monday mornings and loaded the glost belt and punched in after that?

A. On our own time, yes, sir. Prior to the first strike, as far as my recollection goes, we did that.

Q. You say now that it was prior to the first strike that you would come in Monday morning and load the belt, before you punched the time clock?

A. Yes, sir.

Q. When was the date of that first strike?

A. It was some time in April.

Q. What year?

A. 1942-1941.

Q. If I suggested to you the date April 14, 1941, would that refresh your recollection?

A. I think that was about the time.

Q. And there was a strike by the CIO at that time?

A. Yes, sir.

Q. Did you go out on strike then?

A. Yes, sir.

Q. And did you go out on strike, by the way, at any later time?

A. Pardon?

Q. Did you go out on strike at any later time?

A. Let's see, I believe I was fired prior to the second strike, so I don't believe that would be called going out on strike, so I don't believe I did.

Q. There was one other CIO strike at the pottery?

A. Yes, sir.

Q. And did that start on a Monday morning about the 14th of November?

A. Yes, sir, that is the day it started.

The Master: 1941?

Mr. Cooper: 1941.

Q. (By Mr. Cooper) And that was the last strike?

A. Yes, sir.

Q. Now, you say that prior to the first strike on April 14, 1941, you came in every Monday morning and loaded the sagger belt before you punched in the time clock, is that right?

A. Yes, sir; I don't remember of that ever being discontinued there.

Q. I beg your pardon?

A. I don't believe that was ever discontinued there prior to the first strike.

Q. And you also say on these Monday mornings you would punch in at the same time as the girls working in the glost department, is that right?

A. Yes, sir.

Q. Of course, as a matter of fact, these various cards I showed you were all before the first strike, were they not, Mr. Dacko?

A. Yes, sir.

Q. And then all those cards you punched in between 6:30 and a quarter to seven on the Monday morning?

A. I punched in 6:30 and 6:31 and 6:32 on all of them on Monday morning.

Q. Do you know what time the girls in the glost belt punched in those Monday mornings?

A. They should have punched in about the same time.

Q. If the exhibits here show that on those Monday mornings the girls in the glost department punched in between 14 to 7 and 7 o'clock, would you change your mind as to whether you loaded the saggers before punching in?

A. I can't change my mind. I know doggone right well we loaded those saggers on our own time for nothing, for straight one rate, before we punched our cards. It may have been discontinued, but that was my boss' instructions for about three and a half months after I was there, to get in in the morning and help the fellows unload one or two cars, or whatever we needed in the glost department.

Q. What time did the glost belt department generally start?

A. Quarter to 7.

Mr. Lamb: Incidentally, who was the boss?

The Master: I was going to ask that. Who was the boss?

A. Willard Stief.

Q. (By Mr. Cooper) Would it start that time Monday mornings, too?

A. Well, it probably didn't. My time card shows that.

Q. The time card doesn't show anything about that, does it? It shows when you punched the time clock.

A. It shows I started earlier on a Monday morning.

The Master: What about the rest of the department? When did they start on Monday?

A. I think they started at the same time we did.

Q. (By Mr. Cooper) As a matter of fact, you know, don't you, that the girls punched in later on those Mondays?

A. Let me see, those time cards you showed me, were they for October, 1941 or October, 1940?

Q. October, 1940.

A. I think the girls may have punched in later Monday, but then, again, I feel almost certain they punched in before we did.

Q. You are practically certain the girls in the glost belt on all these Mondays punched in between 6:15 and 6:30, is that right?

A. They would have punched in between 6:30 and a quarter to 7.

Q. You mean, now, they punched in at the same time as you did on Monday?

A. That is right. I wouldn't put a quarter hour difference between us.

The Master: When you said you punched in later than the girls, how much later did you have in mind?

A. It could be anywhere between 5 or 10 seconds to 1 or 2 minutes.

The Master: You meant the girls lined up and punched in, and then you lined up and punched in right after them?

A. That is right, sir.

Q. (By Mr. Cooper) Still you were able to punch in at 6:31 or 6:32 a lot of Monday mornings, is that right?

A. Yes, sir.

Q. Now, there is no doubt in your mind, is there, witness, as to what time the glost belt department started to operate?

A. Generally it started operating at a quarter to 7.

Q. There is no doubt in your mind about that, is there?

A. No, sir.

Q. Is there any doubt in your mind as to when the

department started operating on these Monday mornings?

A. No, sir.

Q. You are positive that everybody got in, and operation started during the 14-minute interval between 6:30 and a quarter to 7, is that right?

A. It started operating about that time; yes, sir.

The Master: It would be a 15-minute interval. It is not very important, but you said 6:30 to a quarter to 7:00.

Mr. Cooper: 6:31 to a quarter to 7:00.

Q. (By Mr. Cooper) Well, you are sure that the girls and the other employees in the glost belt department did not punch in in the period from 14 minutes to 7:00 until 7 o'clock on these Monday mornings, is that right?

A. Yes, sir.

Q. (By Mr. Cooper) There was a certain time, was there not, when your hours of work as computed by the company started?

A. That is right, sir.

Q. And it is your claim, is it, that you usually rang in the time clock prior to that, is that right?

A. Yes, sir.

Q. Now, do you have any idea on the average how many minutes prior to that you would ring in the time clock?

A. About 12 minutes prior to the time that my time started.

Q. (By Mr. Cooper) Are you reasonably sure it would be as much as that?

A. Yes, sir.

Q. You would be quite sure that it would be more than 10 minutes, would you?

A. Yes, sir.

Q. (By Mr. Cooper) Now, there was also a quitting time, generally established quitting time, for your department, was there not?

A. Yes, I believe there was.

Q. Would you generally ring out at the time clock some time subsequent to that?

A. Well, according to the company's computation our

quitting time was four o'clock and we would have to ring out any time between four and quarter after.

Q. On the average, how long after four o'clock would you ring out?

A. Oh, it varied a great deal, probably sometimes 5, 6, 10 minutes, probably sometimes 14 or 15.

Q. Have you any idea at all what the average was?

A. I would say around 10 minutes.

Q. Do you think it might have been considerably less than that?

A. No; I don't think so.

Q. You are quite sure, for example, that it would be more than 6 minutes?

A. Yes, I am certain of that.

Q. Now, as a matter of fact, you sometimes punched in right on the quarter-hour you were given credit for having started, did you not? * * *

A. I don't think I remember of more than twice where I punched in on the quarter-hour, and then I was told to refrain from doing so. * * *

Q. (By Mr. Cooper) With whom did you have such a conversation?

A. Mr. Stief.

Q. And you had such a conversation with him at every instance when you punched in on the even quarter-hour?

A. I believe it was just once, and he simply told me that I should punch out after the quarter-hour and—when I start, and prior to the quarter-hour when I quit.

Q. Do you recall only one such conversation with him?

A. That is for the morning, and I think he told me—

Q. Do you recall only one conversation with him?

The Master: Just answer the question directly; do you recall more than one conversation with Mr. Stief on that subject?

A. No, I believe there was another one.

The Master: With respect to your punching in in the morning at the quarter-hour?

A. Punching out, it was.

The Master: The other one was with respect to punching out?

A. Yes, sir.

The Master: Was the first one when you punched in the quarter-hour?

A. Yes, he noticed that on my card and he told me that I should punch in after the quarter-hour in the morning and before the quarter-hour at night.

The Master: Just to get this clear, you stated that there were two occasions that you recalled when you punched in on the even quarter-hour in the morning and got paid from that time, as I understand it?

A. That is right.

The Master: And, one of those occasions Mr. Stief noticed it on your card and called your attention to the fact that you should punch in after the quarter-hour?

A. That is right.

The Master: Now, in the afternoon when you punched out were there some occasions when you punched out on the even quarter-hour?

A. Yes. And probably a minute or two after.

The Master: And were there many of those occasions, or was that limited to one or two?

A. That was limited to one or two.

The Master: Just one or two occasions when you punched out at 4 o'clock, or one minute or two minutes after four o'clock?

A. It was a quarter after, that I can remember.

The Master: Quarter after?

A. That was while I was on an hourly rate.

The Master: In other words, in the afternoon the instances you refer to you punched out at a quarter after instead of punching out at 4:14, say, so that you got paid right up to a quarter after four, is that right?

A. Yes. Or else I punched out right at 4 o'clock and they figured I should have worked an extra 10 or 11 minutes.

The Master: And how many instances were there of

that sort where you punched out at 4 o'clock even, or 4:15 even, that you can recall?

A. I don't think there were so very many.

The Master: And you state Mr. Stief, spoke to you about that on one of those occasions?

A. That is right.

The Master: What did he say?

A. He said to be out at about a quarter after, but not a quarter after the hour. He said see that you be out at a quarter after, and then he said something about not getting out at four o'clock, too.

The Master: Go ahead.

Q. (By Mr. Cooper) You are speaking now of days when you punched out exactly at 4 o'clock, is that right?

A. Yes, sir, that was while I was on hourly rate.

Q. You certainly punched it within two or three minutes after the even quarter hour, did you not? * * *

A. I punched out, but I would not say frequently at that time.

Mr. Cooper: What was that?

The Master: He said, he punched out, but he wouldn't say frequently at one or two minutes after. * * *

The Master: Were you one of the early arrivers in your department, one of the first in line to punch the clock?

A. No, sir.

Q. (By Mr. Cooper) Will you say you were among the last in the glost department to arrive?

A. Oh, I would be there, but I would sit around until every one else had punched in, and then I would punch in. I would never rush myself through the time clock.

The Master: In other words, you were often there early, but as far as punching in you were usually among the last to punch in?

A. Yes, sir. We would have to wait until all the girls got through, and then the unloaders, and then the emptiers would come through.

Q. (By Mr. Cooper) You didn't make any particular effort to punch in at 14 to?

A. No, sir.

Q. And were you one of the first to ring out at noon?

A. Well, I guess we were the only—the whole department was nearest the time clock, so that we were right up at the clock at noon.

Q. Would you frequently manage to ring the clock right at 12 noon or a minute or two after?

A. I think they kept us working until five minutes after, anyway. If those occasions were there, I don't think they were very frequent.

Q. You feel, then, it was almost always five minutes after 12 or later that you would ring out for lunch, is that right?

A. Yes, sir.

Q. As a matter of fact, within 3 to 5 minutes you were usually out there at the clock, were you not?

A. I don't think I was.

The Master: This is at noon, now.

A. Yes, sir.

Mr. Cooper: At noon.

Q. (By Mr. Cooper) You are not so certain now whether you were or not, is that right?

A. As far as my recollection goes, and as far as the majority of the time is concerned, I am certain that we worked until after five minutes past 12 o'clock.

Q. You are sure, for instance, that there wouldn't be any clock cards where you punched out before 12:05—

The Master (Interposing) Well, that is different.

Q. (Continuing)—every day?

A. It might be possible for one 2-week period.

Q. (By Mr. Cooper) What would be your idea as to the average amount of time, and by that I mean the average number of minutes after 12 that you would punch out for lunch?

Mr. Lamb: He has already answered that: he said more than the majority was after five minutes past 12.

The Court: He hasn't given an average; he has stated it was usually after five minutes past 12. Can you state about what the average was?

A. I would say about five minutes.

Q. (By Mr. Cooper) You think it would be about five minutes on the average by the time you would get actually punched out?

A. Pardon?

Q. Do you think it would be about five minutes after 12 on the average that you would actually punch out?

A. That is right.

Q. And you must have stopped work before that?

Mr. Lamb: Objection.

The Master: There is that argument we have been over before as to what "work" means. The question is as to whether you stopped production work before that time.

A. The belt shut down, we went directly to the time clock, we never wasted any time at noon.

The Master: So the only intervening time would be the time it would take you to walk to the time clock?

A. Yes, sir.

Q. (By Mr. Cooper) Would you say if a fellow punched the time clock at exactly 12 he must have left the belt before the belt stopped?

A. Oh, I don't know about that. It didn't take us very long to get to those time clocks once that belt was shut down.

Q. You mean that if the belt stopped at 12 noon an employee in the glost belt department could have stopped production work, taken off his apron, walked over to the time clock and punched out at exactly noon?

A. Let's see, I don't think we had any aprons to take off, as we have them off by the time the production lines had ceased.

Q. You would take off your aprons before production stopped?

A. All we had to do was pull a rope and it would come off, and then I don't ever remember of walking to the time clock at noontime. I don't know if there was anyone there that did it.

Q. How did you get to the time clock at noontime?

A. We ran.

Q. Well, there was some interval at least between the time the production work stopped and the time you rang out at the time clock?

A. Yes, I would say there was some interval.

(Discussion off the record as to working schedule.)

Mr. Nunneley: We had Mr. Anderson subpoenaed to come with relation to some records. We, perhaps, could get through with him.

The Master: All right. Excuse Mr. Dacko and have Mr. Anderson take the stand.

(The witness was excused temporarily.)

STEPHEN ANDERSON, was thereupon recalled as a witness herein, and having been previously duly sworn, testified as follows:

Mr. Cooper: I would like to state on the record, if the Court please, that in this case, again, Steve Anderson was subpoenaed by the defendants as an adverse witness for further cross-examination, and that we are calling him as an adverse witness for the purpose of continuing the cross-examination.

Mr. Anderson, were you served with a subpoena—

Mr. Lamb (Interposing) Just a moment until I state my objection. As I understand it, they have subpoenaed a witness which they have formerly cross-examined and excused, and are now subpoenaing him. In that event I simply want the record to show it is improper cross-examination.

The Master: Well, I would like to get this question of the constitution and by-laws straightened out, so for that purpose I will ask Mr. Anderson myself about the constitution and by-laws of the union.

Do you have those in your possession or do you know where they are?

A. Well, I am no longer connected with the Local 1083.

The Master: You aren't?

A. No, I got transferred to Hudson Motor Car.

Mr. Lamb: You work at the Hudson Motor Car Company now?

A. Yes, sir.

The Master: You are now working at the Hudson Motor Car Company and you have been transferred to the Hudson Local of the CIO?

A. Yes.

The Master: That is the United Automobile Workers?

A. Yes, sir; UAW.

The Master: Where were the constitution and by-laws at the time you left this Local in Mt. Clemens?

A. I think—I believe Mr. Sandler had them.

Mr. Nunneley: Who?

A. Mr. Sandler.

Mr. Lamb: Mr. Sandler of the National Labor Relations Board? * * *

A. Yes, sir.

The Master: Do you know who is president of the local now?

A. I think Mr. Pearl automatically took over as president. He was vice-president. He automatically takes the president's place when the president isn't there. * * *

The Master: Do you know whether there was a constitution adopted by this organization?

A. Yes, we were just in a—well, forming the Union, you know, organization, and we have to adopt a constitution and we take the oath, every member, the whole body.

The Master: Do you know whether you had by-laws in addition to the constitution?

A. Well, we were just making our by-laws.

The Master: You don't know whether those ever were adopted?

A. No, they weren't all completed.

The Master: And who was the custodian of the con-

stitution and by-laws, so far as the by-laws were prepared?

A. Well, of course, the secretary, that was Miss Freddle; Eva Freddle; whether she has them now, I don't know.

Mr. Nunneley: I think, if the Court please, these folks can find these things if they want to find them. For some reason or other they don't want to find them.

The Master: I think I will ask the plaintiff here, the plaintiff Union, in particular, the other plaintiffs are not involved, to produce its constitution and by-laws, if any, and the minutes of the meetings, if it is possible—

Mr. Nunneley: (Interposing) Up to the time of this suit.

The Master: (Continuing) —and if they can't be obtained, I would like to know the circumstances under which it is impossible to find them.

Mr. Lamb: Well, I will tell you what I will do, what I will do, and nothing else, but I don't think in the absence of a subpoena you can ask counsel to go looking for some records that as I understand it are before another governmental agency.

I heard a statement this morning for the first time that some minutes of some meetings were submitted to the Labor Board. I hadn't heard about that before. I didn't participate in the Labor Board hearings, so I am not in any position to tell you about them. I will make the request of Mr. Anderson, who lives in Mt. Clemens, to see the people to see if we can dig up the constitution and by-laws.

Mr. Nunneley: Will you obey the court's order?

Mr. Lamb: I don't have to obey any order, and the Court doesn't have any authority to make such an order, and there hasn't been any order. If somebody wants to subpoena me in this case, go ahead and do it. I will be glad to see the subpoena.

Mr. Cooper: If I understand your Honor correctly, the

Court has ordered the plaintiffs to produce the constitution, by-laws, and any portion of the minutes which may relate to the institution of this action, to produce them in court here. Do I correctly understand you?

Mr. Lamb: He said he would rule on the matter when it came up. I will make an effort to get them.

The Master: I am asking that they be produced, yes.

Mr. Cooper: That is, production of the records and by-laws, and your Honor will rule on the question of materiality after they are here.

The Master: Of course, the minutes you request are those that relate to the authorization of this suit, and if they bring in those minutes, that will be sufficient.

Mr. Lamb: If there are any. If there are any, I will tell you so. I don't have any knowledge about it.

The Master: Bring in the minutes and the constitution, and if there are any by-laws, bring them in.

Mr. Lamb: I will make inquiry about it.

The Master: All right, I will ask that those be produced.

Mr. Lamb: All right. • • •

The Master: I will excuse Mr. Anderson, and I will ask that those documents be produced as promptly as can be done.

(Witness excused.)

NICHOLAS DACKO, was thereupon recalled as a witness, being previously duly sworn, testified further as follows:

Cross Examination (Continued)

By Mr. Cooper:

Q. I show you Exhibits 63, 63-A, 63-B, 63-C and 63-D, and I ask ~~you~~ witness, to look over those exhibits in the column headed, "Noon out," and ask you whether you find a number of instances where you punched out at 12:01, 12:02 or 12:03?

A. Yes, sir, there are several of them.

Q. And that covers a period of 10 weeks, does it not?

A. It covers a period when I first started, prior to the time I went down in the glost belt department.

Q. Of how many weeks?

A. 10 weeks.

Q. There are, in fact, very few occasions when you punched out as late as 5 minutes after the hour, is that right?

A. On these cards there are very few.

Q. Now, did you understand, Mr. Dacko, the method under which the company computed the number of hours that you were credited with having worked?

A. Yes, sir.

Q. I appreciate this is a bit repetitious, but the direct part of this examination is some time back. Do the figures in the right-hand column on your time clock cards represent the number of hours you worked, according to the company's computation? • • •

A. Yes, sir.

Q. (By Mr. Cooper) And you knew the method under which they were computed, did you?

A. Yes, sir.

Q. You saw it every day, as a matter of fact, did you not? When you would pick up a time clock card, it would have the number of hours figured in for every day up to the present day, is that right?

A. That is right. • • •

A. I knew there was a wage and hour law, but I never knew the details of it.

Q. (By Mr. Cooper) Did you ever make any objection to your foreman about the way the company computed the hours worked. • • •

A. My only objection made, of course, was the time I was fired for shutting off the production lines at the regular quitting time one night. • • •

Q. Going back to this occasion you referred to when you turned off the emergency switch at four o'clock, that was on a Friday in about the middle of November, 1941, was it not?

A. That is right.

Q. I think the date was Friday, November 21, 1941?

A. Yes, sir.

Q. And you turned off the switch at 4 o'clock, did you not?

A. That is right.

Q. You did that because you believed you should have overtime after you worked 8 hours in a single day, didn't you?

Mr. Lamb: Objection.

The Master: Overruled. • • •

A. Do I have to answer it yes or no, or may I state my reason for not wanting to work over 8 hours? • • •

The Master: First, I will find out whether he can answer it yes or no. Can't you state whether or not that was the reason you pulled the switch, because you believed under the Wage and Hour Act, you should be given time

and a half if you worked more than eight hours in a single day?

A. Well, the reason I pulled that switch was because I knew from what I gathered that day from my foreman and from my assistant foreman was that we were going to work over eight hours but under eight and a quarter hours, so we would just be going back to the old way we worked before the first strike, but we would have to come in probably—I thought if they got away with that, they would want us to come in in the morning; I thought I would work probably 8 hours and 10 minutes, and we wouldn't get credit for the ten minutes.

The Master: Then, in other words, it was not because of a belief that if you worked over 8 hours in a single day you were entitled to time and a half pay, but it was for another reason, as you stated, that you pulled the switch.

A. That is right, we shouldn't work over 40 hours in one week.

Q. Now, how many hours did you work that week up to that time?

A. I believe it was 24. I am not sure. * * *

Q. You were a witness in certain proceedings had before the National Labor Relations Board last March, were you not?

A. That is right.

Q. Did you testify in those proceedings as to your activity in turning off this emergency switch on November 21, 1941?

A. Yes, I did.

Q. And did you state that you believed you should be paid overtime for anything over 8 hours in a day?

A. I don't recall stating that. * * *

Q. Do you recall whether you were asked the following question: "Did you discuss with these employees why you didn't want to work after 4 o'clock that day?"

A. I believe I recall that question or a question similar to it.

Q. And do you recall your answer was "Yes, I did"?

A. I think the answer was "Yes."

Q. Do you recall being asked—

The Master: I think if you will give him the question and answer together in each case, it will be easier for him.

Mr. Cooper: Thank you, your Honor.

Q. (By Mr. Cooper) Do you recall being asked, "What was the discussion," and answering, "We were talking generally about the reason for the company wanting us to work after 4 o'clock and about getting overtime pay for it. We felt and I think that the other fellows stated that they felt, too, that they should get time and a half." Do you recall that question and answer?

A. I believe I do. • • •

Q. Do you know whether there was a girl by the name of Rita Schulte working at the Mt. Clemens Pottery Company?

A. Yes, there was. • • •

Q. Do you know what department she worked in?

A. I believe she worked in the glost belt. • • •

The Master: Do you know whether she came in with the rest of the girls in the morning?

A. She must have. All the girls came in together.

Q. (By Mr. Cooper:) Then, witness, looking at Exhibit 5-II, being the clock card of Rita Schulte for the pay ending November 12, 1940, would you say that the girls in the glost belt didn't come in at 6:31 on either of the Monday mornings reflected there?

A. No, they didn't. • • •

Q. (By Mr. Cooper) Now, on Exhibit 63-T, your clock card for the same period, you punched in at 6:31 each of those mornings, did you not?

A. Yes.

Q. And the girls on the glost belt punched in after 6:46?

A. Rita Schulte did. • • •

Q. (By Mr. Cooper) Now, the next time card was

November 26th. On both Mondays on that time clock card you punch in at 6:31, did you not?

A. Yes, sir.

Q. And Miss Schulte punched in at 6:46, did she not?

A. That is right.

Q. Exhibit 63-V, your clock card for December 10, 1940, and Exhibit 5-KK, Rita Schulte's clock card for the same period, there again on both Mondays you punched in at 6:31, did you not?

A. Yes.

Q. And Rita Schulte punched in at 6:47 each Monday?

A. Yes.

Q. Now, you don't think it likely, do you, that Rita Schulte just happened to be later than the other girls on those particular mornings?

A. No, I don't.

Q. (By Mr. Cooper) You think, — in fact you know, don't you, that the girls all came in together?

A. Yes.

Q. In other words, on any of those Monday mornings the girls punched in about 15 minutes after you did?

A. That is right.

Q. (By Mr. Cooper) I asked you whether the same thing wasn't true on the two Mondays for the pay period ending December 24, 1940?

A. It is true.

Q. And isn't the same thing true for the period ending December 31, 1940?

The Master: For the record the card of Rita Schulte for December 31, 1940, is Exhibit 5-MM, and of Nicholas Dacko, 63-X. And, there is one Monday shown on that card, and the question was as to whether the condition was the same on that Monday. I don't think he answered. He may have answered, but I don't think so.

A. I answered. I said yes.

Q. (By Mr. Cooper) May I repeat the question? Showing you Exhibits 5-F and 63-Z, I believe.

The Master: Z, yes. Will you give the date?

Q. Being the clock cards for the pay ending January 25, 1941, and ask you whether the same thing is true during those two weeks?

A. It is.

Q. (By Mr. Cooper) During these months subsequent to October of 1940, you were working on the belt, were you not?

A. Yes, I was.

Q. During what period were you working on the belt?

A. I was working on the glost belt ever since about June.

Q. Of what year?

A. 1940.

The Master: That was from June, 1940, until the time you were fired?

A. That is right.

Q. Showing you now, witness, Exhibit 63-R, your clock card for the period ending October 15, 1940, what time did you punch in, on the top line shown on that time clock card?

A. 6:49.

Q. What day of the week was that?

A. I believe it was Friday.

Q. (Indicating) I am indicating to the witness that the letter "W" is stamped opposite.

A. Wednesday.

Q. You would say it was a Wednesday?

A. Yes.

Q. What department were you working in that morning?

A. It is kind of hard to answer. I simply can't remember what department or where I was working; it was probably on the glost belt.

Q. Probably on the glost belt. You wouldn't remember what job you were doing that morning?

A. No, I wouldn't.

Q. Do you remember whether there was a lineup at the clock when you got into the plant that morning?

A. No, I don't.

Q. And going back, how many feet did you say it was from the time clock you punched to the glost belt?

A. About 200.

Q. Of course the belt was quite a long belt, was it not?

A. Yes, sir.

Q. About 300 feet long?

A. Probably more than that.

Q. More than that. And the distance that you would have to walk then would depend, of course, on the particular part of the belt you were working on that morning?

A. That is right.

Q. Do you remember whether you saw any of your friends that morning as you walked into your department?

A. I don't know how I could remember anything that happened any specific day that you pick out over a year ago.

Q. In other words, the answer is that you can't remember whether you saw any friends or not?

A. I can't remember what happened that day.

Q. You can't remember whether or not you might have said "Hello" to some of your friends as you were walking in to the glost belt?

A. No.

Q. You can't remember whether you might have stopped and got a drink of water on your way in, can you?

A. There isn't any place to stop and get a drink of water between the time clock and where we are.

Q. You are sure of that?

A. Positive.

Q. You are sure you didn't walk over to a drinking-fountain and get one?

A. No. I didn't walk anywhere.

Q. You are sure you didn't deviate at all from your course?

A. From the time I punched in, I would say I had to run to the belt, because it probably had started up.

Q. Did you wear finger cots?

A. No, sir.

Q. Did you ever wear gloves on your job?

A. Well, once in a while on a Friday we did get a pair of gloves for hot ware.

Q. Other than that, you didn't ordinarily wear gloves, is that right?

A. No, sir.

Q. Did you wear an apron?

A. Yes, sir.

Q. Do you remember whether you had an apron on that morning?

A. No, I don't.

Q. The chances were that you probably put on an apron before you began production?

A. Oh, there are times that the belt starts up and we all have to get into position without putting on an apron.

Q. Sometimes you wouldn't put on an apron until after production started?

A. Yes, sir.

Q. The particular part of the belt that you were working on that morning, you don't remember that either?

A. No, sir.

Q. You couldn't undertake to say, could you, exactly when you started production work that particular morning?

A. I wouldn't know definitely what happened that day or morning.

Q. The same thing, as a matter of fact, would be true on any other morning on this time clock card, would it not?

A. That is right, sir.

Q. By the way, you ordinarily went home for lunch, didn't you?

A. Not at that time.

Q. During what period of time did you usually go home for lunch?

A. It was during the latter part that I worked at the plant. Probably a month or so before I was—not even that—before I was discharged. It was about a mile to where I lived.

Mr. Lamb: When was that date of severance of your relationship with the company? Was that November, 1941?

A. Yes, sir.

Q. (By Mr. Cooper) How many hours do you claim that you worked on the day indicated by the top line of Exhibit 63-R, your clock card for the period ending October 15, 1940, when you punched in at 6:49 and punched out at 12:04?

A. How many hours do I claim I worked on that day?

Q. That is right.

The Master: Let the witness have a pencil and paper here.

A. I can see this. I would say around five and a quarter hours.

Q. (By Mr. Cooper) That was on the theory that you punched in 11 minutes before 7:00 and punched out 4 minutes after 12:00?

A. That is right.

Q. How about the next day? There you punched in—perhaps I could expedite this a little. And you punched in 11 minutes before, did you not?

A. Yes.

Q. And punched out again at 3 minutes after?

A. Yes, sir.

Mr. Lamb: After 12:00.

Q. (By Mr. Cooper) Punched in at 11 minutes before?

A. Yes.

Q. And punched out at one minute after?

A. That is right.

Q. Making a total of 26 minutes for that day?

A. Yes.

Mr. Lamb: 26 minutes beyond the quarter-hour.

Q. (By Mr. Cooper) The next day—

The Master (Interposing): You mean 26 minutes in addition to the time the company has credited him with, in other words?

Mr. Lamb: That is right.

The Master: Go ahead.

Q. (By Mr. Cooper) And the next day was 11 minutes?

A. Yes.

Q. And four minutes?

A. That is right.

Q. Then 11 minutes?

A. Yes.

Q. And then right on the quarter-hour?

A. Yes.

Q. Or a total of 26 minutes there.

The Master: That is 26.

Mr. Lamb: Yes.

Q. (By Mr. Cooper) And the next day there was 14 minutes?

The Master: Do you want to put these down and then you can add them up. That is right, isn't it, it is 14?

Mr. Lamb: Yes.

Q. And then—

The Master (Interposing): He is adding them all up himself. How many minutes altogether that day?

A. 41, that I didn't receive credit for.

Q. (By Mr. Cooper) 41. And the next day was 40, was it not?

Mr. Lamb: His answer was 41 minutes that he didn't receive credit for.

A. That is right, 40.

The Master: Under what?

A. Tuesday.

Mr. Lamb: Tuesday.

Q. (By Mr. Cooper) Now, adding those all up, it would come to 148, would it not?

A. Yes. • • •

Q. (By Mr. Cooper, continuing) And you were given credit for working 38 hours and 45 minutes? • • •

A. 38¾. • • •

Q. (By Mr. Cooper, continuing) And then if you added 148 minutes to that you would still be below 42 hours, would you not? * * *

A. Yes, I would still be below 42 hours.

Q. Then, you didn't do any work over 42 hours that week on any theory, did you? * * *

A. No, I didn't. * * *

Q. (By Mr. Cooper) In these answers that you were giving me a few minutes ago, you were computing your hours work from the moment you rang in the time clock until the moment you rang out, were you not?

A. Yes, sir.

Q. And during this period there was generally one day during each week when you only worked half a day, is that right?

A. That is right.

Q. And you were working on piece rates anyhow, were you not?

A. Yes, sir.

Q. And you got paid according to whatever number of pieces you made, did you not?

A. We were paid according to the number of cars turned out. * * *

Q. (By Mr. Cooper) It didn't make any difference to you, did it, in this period, witness, whether you punched out at 4:01 or 4:06; the amount you received would be the same in either case, would it not?

Mr. Lamb: Objection. First, we should find the period he is referring to, and, secondly, it doesn't make any difference—of course, he is entitled to be paid if he was on an hourly basis. * * *

The Master: Yes, but confine the question first as to the method under which he was actually getting paid, irrespective of whether that was the right method or not. On the method you were getting paid you got the same pay whether you punched out at 4:01 or punched out at 4:06, did you not?

A. That is right. * * *

Q. In fact, going back to the questions I asked you about this particular card, as to whether you could tell

me when you started production any particular day, that would be the same if I went through all the time clock cards, would it not?

The Master: That is, you mean that he doesn't have any independent recollection of the particular time when he started production on any day in the past?

Mr. Cooper: Yes, your Honor.

The Master: That is true, isn't it?

A. I could look at that card and I would know in the majority of cases the production belts were to start before ten minutes of 7, but I couldn't look at that card and pick out any days it was started before or after ten minutes of 7.

The Master: Looking at the cards, you wouldn't recall whether it was December 13, 1940, or any other day, would you?

A. No, sir.

Q. (By Mr. Cooper) Were there times in the day when the belt would stop for a little while, for one cause or other?

A. Yes, sir.

Q. During those times, production would stop, would it not?

A. That is right.

Q. Do you recall when you joined the C. I. O.?

Mr. Lamb: Objection.

The Master: I will take his answer.

A. I believe it was in February, 1941.

Q. (By Mr. Cooper) You were a steward, were you not?

A. At the time of the second strike, I was.

Q. Did you attend union meetings quite regularly?

A. Yes, sir.

Mr. Lamb: Objection.

Q. You told us, I think, yesterday, that you quite regularly attended union meetings?

A. Yes, sir.

Q. Did you go to practically all of them just prior to the first strike?

A. I went to several of them, at least half of them.

Q. Do you think you went to more than half of them?

A. I may have gone to more?

Q. How often were meetings held?

A. Oh, about once every 2 weeks.

Q. And you went to at least half of them and perhaps more?

A. Yes, sir.

Q. About how many persons would be in attendance at those meetings?

A. Well, that is hard to say; sometimes we would have 15 or 20 people, and then again at times we might have a hundred or more, and at times still more.

Q. Were you at any meeting where a resolution was passed with reference to the bringing of this action?

A. Yes, sir. * * *

Q. (By Mr. Cooper) I show you, witness, a paper taken from the court files in this matter entitled "Designation," and ask whether the name Nick Dacko appearing thereon is your signature (handing document to the witness)?

A. Yes, sir, it is.

Q. When did you sign that, if you recall?

A. I couldn't say.

Q. It appears it was filed in court July 8th, 1941; would that refresh your recollection as to approximately when you signed it?

A. I probably signed it sometime in June; I can't recollect.

Q. Where did you sign it?

A. I believe I signed it at the union hall.

Q. Did you have a talk with any other members of the union about signing it?

A. That is practically all we were talking about for a couple of weeks there.

Q. You talked with a number of union members as to signing the designation, is that right?

A. Yes, sir.

Q. You suggested to some of them that they should sign, did you not?

A. Yes, sir. * * *

Q. (By Mr. Cooper) Now, witness, do you recall who you talked with concerning the signing of this designation?

A. I don't think I could honestly state who I talked to about that.

Q. You knew at the time you signed it, did you not, that a number of union members were signing the designation?

A. Yes, sir.

Q. And you signed it, too?

A. Yes, sir.

Mr. Cooper: At this point, if the Court please, I just want to note that I had intended to ask some questions concerning the matter of contributions to the expense. I recognize that your Honor has ruled in advance on that. I would like to make a motion that I be permitted to ask such questions for a separate record. I think it might save time, and they can be later made a part of the record if the Court rules we are right on the cases we cite in our brief, otherwise they will be stricken.

Mr. Lamb: I thought they had already asked that the witness be available to be called back.

The Master: I think it would be better to do that, because that is a matter that the plaintiff may consider of a confidential character. I would do that if that question weren't involved. I think under the federal rules of pro-

cedure that procedure is supposed to be taken except where a question of privilege is involved. This may not be exactly a question of privilege, but it is something closely related thereto, and I want to be satisfied of your right to ask the questions before you ask them.

Q. Did you read the complaint before you signed the designation?

A. Yes, I did.

Q. And you knew what the complaint charged?

A. Yes, sir.

Q. You knew that the complaint charged that the time clocks were so fixed that if you punched the time clock at 14 minutes to 7:00 the time clock would show 7 o'clock?

. . .

A. I never understood it that way.

Q. (By Mr. Cooper) Did you know that the complaint charged that all the employees worked 45 hours every week? . . .

A. Yes, sir.

Q. (By Mr. Cooper) And you were working about 36 or 38 hours a week, weren't you? . . .

The Master: Make your question clearer. Are you referring to the average time he worked throughout the period?

Mr. Lamb: Every week.

Mr. Cooper: I want to refer to the period in autumn, 1940, when you were on the glost belt. You were working 36 or 38 hours a week, were you not? . . .

A. At that time I may have been, but I don't know how much time we spent on the meetings that wasn't recorded on the cards. Not all of them.

Mr. Cooper: I move the part with respect to the meetings be stricken under your Honor's ruling.

Mr. Lamb: I think it is highly proper to let this witness give his answer.

The Master: That is his claim. I have held it is not within the scope of the pleadings. . . .

Q. Where did you see this complaint?

A. I believe that it was read to us.
Q. You said before that you saw it.
A. Yes, I saw it, too.
Q. And you said that you read it?
A. I read portions of it.
Q. And who gave it to you?
A. I was up at the union hall, too.
Q. I said, who gave it to you?
A. I don't remember.
Q. Who read it to you?
A. I believe it was one of the organizers. * * *
Q. (By Mr. Cooper) Was that about the time you signed the designation, that you read the complaint?
A. I believe it is around the time.
Q. About the same time. Do you know what else the complaint charged? * * *
A. Well, I know it charged that we were punching in 14 minutes to, or approximately, and going right to work. And that some of the people were working for nothing before they punched. I don't know, I believe it may have said something—anyway, there was quite a bit of discussion on the matter where some of the boys went out and punched a minute, to lose a quarter or half-hour's time.
Q. (By Mr. Cooper) Do you say that the complaint charged your hours worked should be computed from the particular moment you punched the time clock, and that the company did not compute it that way, is that right?

* * *

A. I believe that if we would go to work directly from the time that we punched the card, that we should be given credit for that time.
Q. (By Mr. Cooper) You say that is what the complaint charges?
A. Yes, sir, I believe that is what it charged; I am not sure.
Q. Do you remember anything else the complaint charged?

A. No, sir.

Q. Have you ever been convicted of or pleaded guilty to a criminal charge?

A. Do you mean by "criminal charge," a felony or

Q. (By Mr. Cooper) Any kind?

Mr. Lamb: Now, may the Master instruct the witness as to his rights in that respect? * * *

A. I pleaded guilty to two charges under instructions from my lawyer. One was disturbing the peace in Mount Clemens, and another was on an injunction case, a civil injunction case. * * *

The Master: Just let me state this on the record. Pursuant to agreement of counsel, the cross examination is being interrupted so that Mr. Lamb may ask the witness some questions pertaining to the relationship between the defendant, the Mt. Clemens Pottery Company and the S. S. Kresge Company. * * *

Re-Direct Examination

By Mr. Lamb:

Q. Are you familiar with the property of the Mt. Clemens Pottery Company?

A. Yes, sir.

Q. Can you advise us whether there is painted or has been painted on the water tower of the Mt. Clemens Pottery plant, the words, "Owned and operated by the S. S. Kresge Company"?

A. Yes, that has been painted on there.

Q. Have you seen some parts of that particular water tower sign painted off of it?

A. The entire thing has been painted off since our first strike.

Q. And, I wonder if you can tell us whether there are other signs around the place, "Owned and operated by the S. S. Kresge Company"? Are you familiar with those?

A. No, I can't say that there are.

Q. Now, where, in reference to the Mt. Clemens Pottery plant is that water tower that has had those words, "Owned and operated by the S. S. Kresge Company"?

Whereabouts is the physical location of that water tower?

A. I believe it is on the roof of the plant.

Q. Facing which way?

A. It is at the far side nearest the golf course.

Q. Is that water tower on the roof of the plant so that everyone can see it?

A. Yes, sir.

Cross Examination (Continued)

By Mr. Cooper:

Q. You knew, did you not, Mr. Dacko, that under the wage and hour law, there was a reduction in the so-called maximum hours from 44 to 42, and then down to 40?

A. Yes, sir.

Q. Then there was a reduction in the hours of production at the pottery from 42 to 40 when you were there, was there not?

A. Yes, sir.

Q. And during all the time you were there, the hours were always computed on the same method, were they not?

A. Yes, they were.

Q. (By Mr. Cooper) Where are you working now, Mr. Dacko.

A. At the Hudson Motor Car Company.

Q. What plant?

A. United States Naval Ordnance plant.

Q. What kind of work are you doing?

A. I am a clerical worker.

Q. In the office, or in the shop?

A. It is an inspection office in the shops.

Q. And you say you don't punch a time clock?

A. No, sir.

Q. Are you paid a salary or by the hour?

A. I am paid a salary for 40 hours a week and then I get paid by the hour for overtime.

Q. And do you have a particular starting time for a day when you are supposed to be there?

A. Yes, sir.

Q. And you are paid from that starting time?

A. Yes, sir.

Q. Now, I think you said that you had a talk with foreman Willard Stief about the time you were hired, or shortly thereafter, concerning punching in at the time clock?

A. Yes, sir.

Q. You said you did have such a conversation with Mr. Stief?

A. Yes, sir.

Q. And did he tell you not to punch in the clock before 14 minutes to the hour?

A. After I had punched it in, I believe on one or two occasions on a quarter to the hour, I was told not to do that again.

Q. If you did punch it in right on the even quarter hour, your time would start right from then, wouldn't it?

A. Yes, sir.

Q. You said, I think, in your direct testimony, Mr. Stief also told you you would be docked 10 per cent for coming in late, is that right?

A. Yes, sir.

Q. Were you ever docked?

A. No, sir.

Q. You told us the other day you didn't know of any instances where others were docked, didn't you?

A. I don't know any specific names; no, sir.

Re-Direct Examination

By Mr. Lamb:

Q. Mr. Dacko, calling your attention to Exhibits 63-I, 63-J, 63-K, 63-L, 63-M, 63-N, 63-O, 63-P and 63-Q, I will ask you to advise us whether on the Monday mornings shown thereon, you did any work which is not indicated on the time cards represented by those exhibits?

The Master: Just for the record, would you give the dates of those?

Mr. Lamb: Yes. June 11, 1940; June 25, 1940; July 9, 1940; July 23, 1940; August 6, 1940; August 20, 1940; September 3, 1940; September 17, 1940; and this is December 1, 1940.

Q. (By Mr. Lamb) What is your answer?

A. I believe that on every one of these Monday mornings we came in in the morning and unloaded at least two cars on our own time before punching in.

Q. Will you estimate how long on each of those mornings you worked unloading those cars prior to punching the time clock? * * *

A. It was at least ten minutes.

The Master: What is the maximum?

A. About 12.

The Master: 10 to 12 minutes.

Q. (By Mr. Lamb) Can you give us the approximate date of the meeting that you attended of this United Pottery Workers when it was decided to authorize the institution and prosecution of a suit in behalf of the employees of the Mount Clemens Pottery Company, under the Fair Labor Standards Act of 1938—

Mr. Cooper: Objection.

Q. —which action was subsequently filed and is represented by case number—

The Master: 2582.

Q. (Continuing) —2582 on the docket of the court?

Mr. Cooper: I object to the question, if the Court please. The question goes beyond anything that was developed on cross examination this morning. It assumes matters as to which there is no evidence here, and it is attempting to avoid the best evidence rule by getting in oral testimony on something which—

Mr. Lamb: He has testified this morning—

Mr. Cooper: —can be proved only by the minutes.

Mr. Lamb: Not necessarily. This witness attended the meeting. He testified about that this morning, that he attended the meeting.

The Master: You asked the witness as to whether or not there was a meeting at which the question of authorizing suit was taken up, and he said yes.

Mr. Cooper: That is right.

The Master: And now you want to know the date of that meeting.

Mr. Lamb: The approximate date, as he can give it.

Mr. Nunneley: That wasn't limited to that. He went on with a whole lot of things.

The Master: He is revising the question now. All you want to know is the date of the meeting referred to on his cross examination?

Mr. Lamb: Yes. Give us the best recollection you have of the date of that meeting.

Mr. Nunneley: And I move the question be stricken from the record.

The Master: I will strike the previous question, and this question can be answered. The question is the date of the meeting you referred to on cross examination.

Mr. Lamb: Relative to authorization of the suit on behalf of the employees.

The Master: Yes.

A. I believe it was some time in April, just before our strike.

Q. (By Mr. Lamb) Would you be able to tell us how many days approximately prior to the strike? Can you give an estimate?

A. All I can say honestly was it was within 30 days.

Q. Was this 30 days prior to the date of the strike?

A. Yes, sir.

Q. I think you have testified that the strike was on or about April 14, 1940, is that right?

A. I think that is about right.

Q. Or 1941?

A. Yes, sir.

Q. Did you give us your employment dates when you left the Mt. Clemens Pottery Company?

A. I believe I did.

Q. Do you have a recollection now, approximately?

A. I began working in February, 1940, and I left on—the 21st was my last day, 1941, of November.

Q. 21st of November, 1941?

A. Yes.

The Master: Mr. Lamb has raised the point as to whether Mt. Clemens is in the eastern district of Michigan, and the Court will take judicial notice of the fact that it is. * * *

Mr. Lamb: So there will be no question about it, may we go back on the record, and the plaintiff will rest.

Mr. Nunneley: Now, first, what about those records the Court ordered produced?

Mr. Lamb: Well, I will discuss that with the Court.

The Master: Has there been any—

Mr. Lamb: I have all the records. * * *

The Master: Are there minutes of a meeting at which this suit was authorized?

Mr. Lamb: No, no minutes.

Mr. Cooper: Is the minute book in court?

Mr. Lamb: Yes.

The Master: Then there are no minutes in relation to any such meeting.

Mr. Lamb: No. * * *

Mr. Lamb: I produced the minutes relative to the minutes authorizing the institution of this suit, and in the minutes there is no reference to such a resolution having been adopted. I can prove that by the oral testimony of the last witness, and other witnesses.

The Master: Do you also have the constitution and by-laws.

Mr. Lamb: Yes.

The Master: Well, I think the proper procedure is for you to deposit these, the constitution and by-laws and the minutes, with the Court. I will not make them available to inspection of the defendants until such time as it may be shown that they have a right to inspect them in connection with testimony of any witness. * * *

Mr. Cooper: (Interposing) Couldn't we be heard on that, your Honor? Certainly we didn't have any understanding that the constitution and by-laws were going to be produced and go into secret custody. After all, what is the use of introducing the constitution without examina-

tion of it? How can we ascertain what is in it, or what questions can be asked about it, or who to ask them of?

. . .

The Master: I don't think they can take advantage of anything of that sort, and those handbooks must be widely distributed so that people can see them. I think in my discussion I intended to apply that only to the minutes.

Mr. Lamb: That is agreeable. . . .

(The constitution and by-laws above-referred to was then marked Defendants' Exhibit 64.) . . .

Mr. Lamb: Now I turn over to the Master two books representing the minutes of the organization.

Mr. Cooper: May I ask are they represented as being the complete minutes?

The Master: Mr. Lamb stated they were the complete minutes as far as he knew. . . .

Mr. Lamb: Plaintiff rests. . . .

June 16, 1942

Mr. Cooper: If the Court please, I am holding certain booklets marked for identification as Defendants' Exhibits 66 through 73, the booklets purporting to be copies of collective agreements and shop rules in effect in various factories. Before the trial is over, we may wish to offer these or some of them as exhibits, and I thought as a matter of convenience, I would like to ascertain at this time, if possible, whether or not there can be an agreement as to the identity or authenticity of these as being copies, so that I can gauge the necessity of the number of witnesses I may have to call for the purposes of identifying them.

I thought if it may be possible to have an agreement as to the identity of these, save on the question of materiality at such time as they may be offered, we might eliminate the necessity of calling witnesses for the purpose of identifying the particular books. . . .

PAUL C. BENZ, was thereupon called as a witness on behalf of the Defendants, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Cooper:

Q. Your name is Mr. Paul Benz?
A. That is right.
Q. Where do you live, Mr. Benz?
A. In Mt. Clemens.
Q. Are you employed by the Mt. Clemens Pottery Company?
A. That is right.
Q. And in what capacity?
A. I am plant engineer and superintendent of maintenance.
Q. Have you had professional training as an engineer?
A. Yes, sir.
Q. At what school or college?
A. Michigan.
Q. Mr. Benz, I show you a document marked Exhibit 30-A for identification, and ask you whether you can identify it?
A. I made that print.
Q. And what does it represent?
A. That is a floor plan of the plant.
Q. Is it drawn to scale?
A. It is drawn to scale of one to 20; that is one inch equals 20 feet.
Q. Can you state whether or not it represents accurately the dimensions and general outline of the plant?
A. Yes, sir, it does.
Q. Are you familiar, Mr. Benz, with the paths custom

arily followed by employees in reaching the various departments?

A. I am.

Q. I will ask you whether or not Exhibit 30-A for identification shows those customary paths?

A. It does.

Q. And how are they indicated, Mr. Benz?

A. In wide yellow marks.

Q. Whether or not it is customary from your observation for employees to follow the pathways indicated by the yellow lines on that exhibit?

A. That is the customary way to get to their department, to their place of employment.

Q. Is there any showing on that exhibit as to the location of the various departments?

A. Yes. The departments are marked, named.

Q. By lettered designations on the plat?

A. Yes, sir.

Q. And do the lettered designations indicate the location within the plant of the various departments?

A. Clarify that. You mean, if they show in general where these departments are?

Q. Yes, sir.

A. That is right, they do.

Q. Does the exhibit also show the location of the time clocks?

A. Yes, sir.

Q. How many time clocks are there in the plant, Mr. Benz?

A. There are three.

Q. Is that at the points marked "time clock A" and "time clock B" on the exhibit?

A. That is right.

Q. During the period from October, 1938, up to March or April, 1941, did you have three time clocks in the plant through all that period?

A. From October of 1938 to March of 1941?

Q. Yes, sir.

A. No. At that time there were two. I believe their third one was put in in the late winter or early spring of 1941.

Q. And how long is the plant?

A. The plant is over all just a little less than a quarter mile long. It is 947 feet for the main buildings of the plant, and the administration building is another 70 feet.

Q. How large an area is under roof, Mr. Benz?

A. About eight and a quarter acres; a little more than that.

Q. And an acre has about 43,000 some square feet?

A. 43,560.

Q. I will ask you, Mr. Benz, whether or not you are familiar with the time clocks which are used by the respective departments?

A. Yes, I am.

Q. I show you Defendants' Exhibit 65 for identification and ask you to describe to the Court in a general way what that shows, and how it was prepared (handing exhibit to witness)?

A. Well, this exhibit shows the various departments that are on the different clocks; that is, the clock marked "A" has the clay shop and bisque sagger filling department; the bisque carloading; the casting department; mold department; slip house; and the sagger departments.

Time clock "B" has the balance of the departments. And, shows also the distances to the various departments from the time clock. That is, the closest employees and also the farthest ones of each department.

Q. And did you prepare that table, Mr. Benz?

A. Yes. I made it off of this map.

Q. How did you determine the distances as shown on that table?

A. Scaled them.

Q. Can you illustrate to the court on that exhibit, Mr. Benz, the path followed by employees in the dipping and brushing departments from time clock B to the departments?

SUMMARY LINE 16, PAGE 2222 THROUGH LINE 6, PAGE 2225 AS FOLLOWS:

"Witness demonstrates the aisles which were followed."

Q. (By Mr. Cooper) Let me ask you, Mr. Benz, whether or not the path that you have indicated on the exhibit is the customary and shortest route to the department?

A. That is the customary and also the shortest route that you can get to that department from time clock B.

Q. Have you estimated, Mr. Benz, the distance from time clock B to the brushing and dipping department along that route?

A. Yes, sir.

Q. And what is the distance?

A. The closest part of the department, that is, that portion just inside of the door west of the chipping belt, that is, just west of the letter S on the word "selectors" on the print, is 385 feet, and the farthest point in the southwest corner in that department, just above the department marked "maintenance" on the print is 510 feet.

Q. Can you tell me, Mr. Benz, what time clock is used by employees working at glost carloading or glost sagger filling?

A. That is time clock B.

Q. And can you point out to the court the path ordinarily followed by employees in those respective departments from the time clock to the departments, taking the glost carloading first?

A. After they punch in, they follow west up to the point of where the doorway goes through the space marked "storage" and then at that point they turn north just a few feet and follow along the tracks of the carloading department in a westerly direction to their work. That would be the yellow line on the map shown under the name "glost carloading."

Q. Have you had occasion to determine that distance?

A. That distance to the nearest point that the cars

could be ready for loading is approximately 225 feet and the farthest point that the cars could be available for loading is 325 feet. In short, there is a certain limitation here which is variable according to where they stop the night before. The cars may be empty on this end of the line, or if they were behind, they may be empty on that end of the line. There is no definite set point in there.

Q. Do the employees working in the department marked "glost sagger fillers" follow generally a portion of the same path followed by employees in the brushing and dipping department?

A. They follow the same path as the employees in the brushing and dipping until they get across the overhead, then they distribute to the various points of work. The first conveyor of the glost belt is their point of work, and there are stations along here at approximately 5-foot intervals, and each girl has one of these stations. They range from approximately 50 or 60 feet, to the east of the overhead crossing up to the west end of the belt before mentioned.

Q. Have you had occasion to determine the distance from time clock B to the glost sagger filling department?

A. That ranges between 310 feet, which would be the closest girl, approximately, across the bridge, and 420 feet to the girl on the farthest west end.

Q. Mr. Benz, can you tell me what time clock is used by employees working in the clay shop?

A. The clay shop uses time clock A.

Q. Can you indicate the path customarily followed by employees in the clay shop from time clock A to the clay shop?

A. Time clock A is along the north wall of the building, and is indicated on the map accordingly. They, after punching in, travel west along the north wall of the building, up to the point where the path turns south on the east end of the bisque kilns. From there they go south, they travel south until you reach the aisle going west on

the south side of the bisque belt. The bisque belt is indicated on the map by the lettering "Bisque sagger filling," which is written directly over the conveyor.

From there they travel west along the north side of the clay shop toilets up to the north and south mangle line, where they have to angle a few feet north, and then continue west along the north side of this line of mangles to about 20 or 30 feet west of the mangles, where they again jog south a few feet and then continue their travels west along the north side of another line of mangles running east and west.

Now, their department ranges from the east side of the north and south mangles up to the west end of the plant.

Q. How long is that department, by the way, Mr. Benz?

A. Do you mind if I scale that?

Q. All right.

A. About 410 feet.

Q. And how far is it from time clock A to the clay shop?

Mr. Lamb: What department was that?

Mr. Cooper: Clay shop.

A. The nearest employee is approximately 400 feet from the clock, and the farthest employee approximately 800 feet from the clock.

The Master: After they proceed on the path to the position where they leave the path and go to their place of work do they sometimes have to travel through these mangles quite a distance to get to their place of work?

A. Well, these mangles are in closed conveyors that carry the ware from where it was made through a dryer to the point of the girl that finishes the ware. Now, the man making the ware on these particular line of mangles, that is the north and south along here and here, they will travel down this aisle between them, where the girls would travel down on the east side and west side of the line, and one employee, or about four employees are situated directly east on the east line of mangles on what we call the oval ware job. That would be the closest job.

Q. And what time clock, Mr. Benz, is used by employees in the decorating department?

A. The decorating department uses time clock B.

Q. Can you indicate to the Court on Exhibit 30-A the path customarily followed by the employees from time clock B to the decorating department?

A. They start out as our other employees do on time clock B going west from the clock to the point where the doorway goes through the space marked "Storage," and they go directly south to their department, their department being directly south of the decorating kilns in the area that on the print would be almost due south of time clock B and the glost unloading.

Q. And have you determined the distance from time clock B to the decorating department?

A. The employees closest to the clock are approximately 170 feet from it, and those farthest about 350.

Q. By the way, Mr. Benz, are there certain toilets located within the plant which are not indicated by lettering on Exhibit 30-A?

A. I notice that I omitted lettering the so-called clay shop toilet rooms. I can indicate them with pencil, if you wish, if you will permit it.

Mr. Cooper: I think that would be all right.

The Witness: You want me to mark them?

The Master: Yes. Why don't you just mark them?

(The witness then marked on the Exhibit.)

The Court: These toilets that you have marked are just to the east of the first line of mangles, or I guess the only line of mangles in the clay shop?

A. The north and south line. They are about—the closest point of the clay shop toilets are about 30 feet from that east battery of north and south mangles.

Q. (By Mr. Cooper) Does it appear on Exhibit 30-A, Mr. Benz, that the kilns in some of the storage space are closer to the time clocks than the various departments you have been discussing?

A. The kilns in some of the storage space are closer? Well, the time clock A is directly north of the west end

of the glost kilns. Time block B is along the south wall of what we call the kiln building. That is, they are on the south side of the glost kilns.

Q. Is the concentration of employee work stations greater in the kiln departments or are there more employees working elsewhere than in the space occupied by the kilns?

A. Elsewhere, because the kilns employ comparatively few men.

Q. The employees generally have to get by the kilns to get to their various departments, is that right?

A. Yes, sir. They can't get out of it.

Q. Are the employees pretty well scattered over the entire 8 acres under roof?

A. Well, the northern portion of the plant is used by the kilns, but otherwise they are scattered pretty well over the south three-quarters of the plant.

Q. Did you testify, Mr. Benz, that on Defendant's Exhibit 65 you indicate under the heading "Time clock A" the various departments using that time clock?

A. I enumerated those, yes.

Q. Does that include all of the departments using that time clock?

A. That is correct.

Q. And what departments are listed under time clock B? Perhaps I better rephrase the question. Whether or not under time clock B you have listed the departments where the employees use time clock B?

A. I have.

Q. Does that include all departments using that time clock?

A. That is right, it does.

Q. And have you indicated on Exhibit 65 the distance from the respective time clocks to the departments using each time clock?

A. I have. The closest and farthest.

(Exhibits 30-A and 65 received in evidence.)

• • •

Q. (By Mr. Cooper) Let me ask you once more, Mr.

Benz, whether or not the paths as indicated on Exhibit 38 are the paths which are customarily and usually followed by employees going to the departments that you have described?

A. They are. * * *

Q. (By Mr. Cooper) And whether or not the paths which you indicate on Exhibit 30-A are the shortest and most convenient paths to reach the various departments without crossing or climbing over machinery?

A. They are the shortest and most convenient. * * *

The Master: Did I understand you to say that there were none or few employees working in the space where the glost kilns are located?

A. Only the firemen, the kiln firemen and the pusher men. * * *

Cross Examination

By Mr. Lamb:

Q. As I understand it, Mr. Benz, you didn't propose to give the impression by drawing these yellow lines on this Exhibit 30-A, that these were the only aisles available to the employees getting to their various jobs?

A. I think I qualified it by saying there were numerous other aisles.

Q. These would be your impression of what should be the shortest and best route to their jobs?

A. That is my observation of the route they generally use.

Q. As you say, there are numerous other aisles throughout the plant which are available to the employees?

A. That is right—well, wait a minute, "available." Some of them are not available to them, but they use them.

Q. You mean there are some aisles which you have informed them shouldn't be used by them?

A. Because of the danger of getting hurt.

Q. Then there are other aisles which are used by

them, which are not marked with your particular yellow mark?

A. That is right. I will give you an example of that. Between the kilns there is an aisle, but sometimes the trucks will block that aisle and it is not generally used, but if they see the space open, some of them will go through there.

Q. Yes. You mentioned the glaze room, and I was interested in knowing on the particular route which you have marked from the time clock B, do the employees go down the east-west line which appears as the second yellow line from the top of Exhibit 30-A, or do they go down the south line which is the easternmost yellow line on the map to get to the glaze room?

A. I have never observed them going along the south line, because that route is further. They would have to come to the south end of the chipping belt and then double back to the north end through the dipping department, and unless weather conditions were such that it was not undesirable to walk along the line of tracks and work in the south end. Going along the tracks into the south end of the building; that would be farther than to take this route I have indicated.

Q. If an employee worked in the south end of the glaze room, is it your testimony he would have traveled by taking the northern line which you have marked on the route to the glaze room, or the southern line which you have referred to?

A. The southern line, you mean going along the railroad siding?

Q. Yes.

A. Outside the buildings.

Q. Referring to the line.

A. In my opinion the line outside the buildings would be longer, because he is traveling farther south than necessary. There is, incidentally, no particular work going on directly inside the door. The only time they come in there, there is a wash rack located alongside the door, to wash off their screens, whenever they get through with

a ran, glaze. Otherwise there is no work going on here. Most of the work is in the center of that department.

Q. Do the employees in the bisque kiln department use time clock B or time clock A, Mr. Benz?

A. All kiln employees use time clock B.

Q. That is some rule of the company?

A. Well, they belong in that particular department and are paid on the same date that time clock B is paid.

Q. But are employees who work in the bisque kiln department, in that place indicated by the yellow circle between the words "Bisque Kiln Department" closer to time clock A or closer to time clock B?

A. They are closer to time clock A.

Q. You say, however, that they are required to punch the time clock B, is that right?

A. That is correct.

Q. The employees who are next to them in the bisque carloading department indicated right under the words "bisque kilns," the bisque carloading, do they use the time clock A or time clock B?

A. Time clock A.

Q. And they are closer to time clock A, are they not?

A. Yes, sir. It would be about the same. (Measuring on the exhibit.) Yes, they are.

Q. Now, all of these employees over here, indicating the western side of your Exhibit 30-A and including bisque carloading, bisque sagger filling, the clay shop, engine room, boilers, slip house, and so forth, they are included in time clock B, are they?

A. Well, the boiler and engine room is time clock B. Clay shop is time clock A. Slip house is time clock A. bisque sagger filling is time clock A. And all points west of there are time clock A.

Q. Yes, and time clock B—what employees on the western side of this map, Exhibit 30-A?

A. The boiler room employees.

Q. The boiler room employees. Are they the only ones?

A. They are the only ones.

Q. Who have time clock A?

A. That is right. Outside of the kilns.

Q. But the bisque kiln?

A. They belonged to time clock B.

Q. They belonged to time clock B. Do I understand your testimony, then, that the employees are given a time clock without reference to the distance from the time clock?

A. Well, I am not too well acquainted with the office routine to be able to give you the direct reasoning of it. However, the employees using,—the employees on the kilns come under the leadership of the department that has most of its employees in the east end of the plant. And, the employees on one clock are paid on one week-end, and the employees on the other clock on the following week-end, so these employees all come under the same grouping, same type of work, the same men: glost kilns and bisque kilns.

Q. You are referring to the employees, we will say, of the northern part of the Exhibit 30-A, is that right?

A. Meaning the kiln men.

Q. Yes.

A. That is right.

The Master: You said there were very few men in the glost kiln department. That also applies to the bisque kiln?

A. They are manned the same way, same number of men.

Q. (By Mr. Lamb) Are you able to estimate the number of men in the glost kiln and bisque kiln?

A. I can't give you an accurate enough figure.

Q. Would it be 50 or 100?

A. Oh, no. I don't think there is 30 men involved in the entire setup.

The Master: For both the departments?

A. Yes.

Q. (By Mr. Lamb) Now, the glost carloading employees are under which time clock?

A. The glost carloading are on B.

Q. Are they immediately adjacent to the glost kiln department?

A. They are directly south.

Q. How far south from the glost kiln department?

A. Now, when you say "department," do you mean to the closest kiln, or how do you want that clarified?

Q. Well, you have made this map, and, of course, the rest of us will have to ask you about this map, but I notice the word "glost carloading" on the northern side of the line dividing the glost kiln department from, for instance, the glost sagger department.

A. Maybe I better explain where these people work.

Q. Is that the dividing line?

A. No. There is no work going on in the area directly north of the glost car marked on the print. That is storage space for cars.

The plant is so operated that in five days' time they have to produce enough ware to last over the week-end as the kilns never shut down. They go day and night, 365 days of the year. Therefore, a large portion of the end of the plant is set aside for storage of the ware that is finished, or ware that has come out of the kiln. There is no work going on in there.

Q. Where do the employees, glost carloading employees, work?

A. They work on the north side of the glost belt. That belt is just south of the line indicated as glost carloading. They take the ware off of the belt, the filled saggers, and build them up onto the cars which are located just north of this line of columns shown on the print.

Q. What maintenance employees have you marked, have you referred to, in your Exhibit 65 to say that they are 550 feet at the nearest point from the time clock B?

A. The maintenance department is south of what is marked the dipping department. That is merely what we call the carpenter shop. That is where they keep their toolboxes. Some of the men keep their toolboxes on a bench along the west side of the department marked "maintenance"; some of them have them along the east side, and adjoin this to the point they go to get their

tools or put on their overalls, and that is either on the west or the east side of that particular department.

The Master: May I ask, do the maintenance men in the morning proceed immediately to their department, or do they proceed directly to the job that they are working on?

A. No. They all proceed to their department, because in the evening when they are through with their work they go to their so-called maintenance department, take off their overalls, lock up their tools, and then go home, and in the morning if they proceed on their job, if it is the same job, they have to go back and get their tools; otherwise they wouldn't be there in the morning.

Q. Do I understand that the employees who use time clock B have the exclusive use of the toilet and cloak rooms appearing on the easternmost part of your map, 30-A, and the employees who use time clock A have the exclusive use of the toilet and cloak room which appears at the northern part of the map?

A. That statement is correct.

Mr. Lamb: Thank you. That is all.

Cross Examination

By Mr. Boos:

Q. Mr. Benz, as plant engineer and superintendent of maintenance out there, do you have occasion to go up on the roof of the plant?

A. I do that at fairly regular intervals as a matter of inspection.

Q. When you are up there on inspection, do you ever have occasion to notice the water tower that is on the roof of the plant?

A. The water tower isn't on the roof; it is in a small court which the building now surrounds. I go up on the tank also at intervals to see what the condition of the tank is.

Q. How long have you been out there at the plant?

A. Since May of 1934.

Q. Is there any lettering or sign on that plant at the present time?

A. Yes, on the north side of the tank are the words "Mt. Clemens Pottery Company."

Q. Since 1934 was there any other sign besides "Mt. Clemens Pottery Company" on that tank?

A. Yes, sir; there was in addition to that "Owned by S. S. Kresge Company" directly below the "Mt. Clemens Pottery Company."

The Master: What was the comparative size of the lettering?

A. The lettering of the "Mt. Clemens Pottery Company" and "S. S. Kresge" were about alike, that is, about 2½ feet high, about 30 inches, and the "Owned by" was a little smaller, I think about 6 inches smaller.

Q. (By Mr. Boos) Do you happen to know a former employee out there who is known on this record at least by the name of Nick Dacko?

A. I have heard of him; I didn't know him.

Q. Since 1934 was there ever any sign on the tank of the Pottery which said "Owned and operated by S. S. Kresge Company"?

A. No, sir.

Q. As testified by Mr. Nick Dacko?

A. There never was that lettering on the tank.

Q. By the way, can you see the lettering that has been painted out at the present time?

A. If you go up on the upper platform of the tank, yes, you can still trace it.

Q. The lettering was in what color?

A. White.

Q. And superimposed over the white has been what color paint?

A. The dark green that the rest of the tank is painted.

Q. Had the lettering of the words "Owned by S. S. Kresge Company" been repainted within your knowledge before it was painted out?

A. Oh, yes, I believe two or three times.

Q. One coat superimposed over the other coat?

A. That is right.

Q. Can you still see the raised letters through the green paint?

A. They have been painted so many times that they still show through the green paint, that is, they do not show white, I mean you can follow the outline because the paint is heavier on the letters than it is on the rest of the tank. * * *

Re-Cross Examination

By **Mr. Lamb:**

Q. When did you say that that lettering was painted over?

A. What portion was painted over?

Q. No, when did you say that business about the ownership of the S. S. Kresge Company—when was that painted over?

A. I don't remember that I did say.

Q. I beg your pardon?

A. I wasn't asked that.

Q. No, I am asking you.

A. Oh, I see; that was in the early summer of last year.

The Master: Do you know the reason why that was painted over?

A. No, sir; Mr. Doll told me to re-paint it, leave that out. * * *

Re-Direct Examination

By **Mr. Cooper:**

Q. Is there anything, Mr. Benz, which prevents an employee from making use of any restroom or toilet which may be convenient to him?

A. No.

Q. I understood you to testify that employees using time clock B had the exclusive use of the toilet rooms at the easternmost part of the plant. Did you mean by that

to indicate that any other employees were not permitted to use those toilet rooms?

A. I know of no definite restrictions preventing them from using it. It has just been a matter of custom, probably, that they use the cloak room which is closest to their route of travel. * * *

Q. (By Mr. Cooper) Can you state, Mr. Benz, whether or not the routes you have indicated on Exhibit 30-A as the usual and customary routes are kept clear for employee travel?

A. These particular routes indicated on this print are the routes that are kept clear for employee travel. * * *

Q. Are the other aisles in the plant that you spoke of as being in existence likewise kept clear for employee travel?

A. Well, some of them are. The reason I didn't indicate some of them are because they are longer than the routes shown and are not the ones commonly used.

Q. There are some longer routes through aisles which are ordinarily clear?

A. That is right.

Q. Then there are other aisles which might be as close as the paths you have indicated which are not kept clear?

A. Through some of the departments, yes.

Q. Will you state from your observation whether or not these alternate routes are used except by an occasional employee?

A. You mean for the purpose of coming to and from their place of employment?

Q. Yes, sir.

A. No, sir, they are not used, in general.

Q. Can you say whether or not an examination of the water tower in the plant reveals exactly what language had been on prior to the time it was painted over last summer?

A. Yes, sir. To clarify that, if the Court wishes, or Mr. Lamb wishes to send someone up there, I would be glad to take them up and you can trace out the letters, if that will clarify it. * * *

ROBERT A. FITTON was thereupon called as a witness in behalf of the Defendants, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Nunneley:

The Master: What is your full name?

A. Robert A. Fitton.

Q. Your name is Robert A. Fitton?

A. Yes, sir.

Q. Where do you live, Mr. Fitton?

A. I live in Mt. Clemens. The street,—do you want the street?

Q. Yes, you might give it.

A. I live on 103 North Rose Street, Mt. Clemens.

Q. Are you employed at the Mt. Clemens Pottery Company?

A. Yes, sir.

Q. How long have you been employed there?

A. Well, approximately 15 or 16 years.

Q. And what have you worked at there?

A. Well, I have worked at the bench, batting out, jiggering, and as an assistant foreman.

Q. And what is your present position?

A. Assistant-foreman.

Q. And how long have you been an assistant-foreman?

A. Oh, I would say about 12 or 13 years.

Q. Do you know Mr. Lamb here?

A. No, sir. Never seen him before, until today.

Q. Did you start a suit in Toledo against the Mt. Clemens Pottery Company within the last year or so?

A. No, sir.

Q. Did you ever authorize anyone to start a suit in your name against the Mt. Clemens Pottery Company, any kind of a lawsuit?

A. No, sir.

Q. When did you first learn that there was such a suit?

A. Why, to tell you exactly the time, I couldn't say, but a while back Mr. Doll asked me if I knew that I had started a suit against the company.

Q. That is the first news you had of a lawsuit?

A. That is the first that I had any idea of it.

Q. You never saw any of the papers connected with it, did you?

A. No, sir.

Q. Now, when you are working for the company in what department do you work?

A. Clay shop.

Q. And how long have you been working in the clay shop?

A. About 15 years.

Q. And just tell us, briefly, what is done in the clay shop.

A. Well, the clay shop is where they take the clay and they form it into the dishes before the first baking.

Q. And just briefly, in general, how is that done?

A. Well, we have the two operations. We have what we call the hand jobs and then the automatic jiggering. The hand job, of course,—there are three people on there. The batter-out, he flattens the clay and puts it on the form; the jigger man puts it on the wheel and polishes it up; and on the back end of the machine there is a girl and she takes it off of the forms and finishes the edges and the faces.

Q. That is, three people worked together doing that, is that correct?

A. That is a three-person operation.

Q. And can they operate individually, or do they all three have to be there in order to operate?

A. Well, they can't work individually, it takes three of them.

Q. In other words, if one of the particular group is missing the other two can't work, is that right?

A. That is right.

Q. And now you say another part of the work has to do with machines?

A. With an automatic machine, yes, sir.

Q. And what does the automatic machine do?

A. That automatically forms and polishes the ware, and of course it employs an operator to run the machine, and the back end is the same as it is on the hand job, the girls take it off and finish it up.

Q. How many girls are there on the machine?

A. Total girls, finishers and everything?

Q. Yes, that is on a machine?

A. On a machine there is approximately about 20 to 24 girls.

Q. Working on the machine?

A. On the machine.

Q. And there is an operator for that, is that correct?

A. There are three men, operator, pugger, and operator's helper.

Q. And in the case of these people, can they operate before the machine starts?

A. No, sir.

Q. Can the machine operate unless it has practically a full crew?

A. No, sir.

Q. Now, speaking of the jigger man and batter-out, what do these people do when they come to work?

A. After they leave the time clock you mean?

Q. Yes.

A. Well, they walk to their respective jobs and they straggle in and start getting ready, that is by taking off their shirt and putting on their aprons and they have their so-called tools, their scrappers, that they have to bend over and shape them up and get ready so they can go to work when the rest of the crew is all there.

Q. What is the normal starting time in that department?

A. The normal starting time, up until recently, was 6 o'clock.

Q. Was there an afternoon shift also?

A. That was also at 2:45.

Q. 2:45. And did work start before 6 o'clock?

A. On an average it started after 6 o'clock.

The Master: Let's just get that clear. What type of work are you referring to? Are you referring to actual production work on the job, or did you include the preliminary work that you have already testified to of fixing up the tools, and so forth?

A. That is around 6 o'clock.

The Master: Well, you mean they start fixing up the tools—

A. (Interposing) When they get to their job they start getting their shirt off; the fixing of their tools is a very, very minor operation.

The Master: The taking of the shirt off, after fixing the tools, you mean that doesn't start until 6?

A. Approximately 6 o'clock.

Q. (By Mr. Nunneley) How long before 6 o'clock are the people permitted to pass the time clock?

A. Well, they are allowed to use their discretion, as long as they are in there by 6 o'clock.

Q. Is there a limit on how early they can come in?

A. There is a limit on how early they can start; they can't start coming in until 14 to 6.

Q. Is there any requirement that they be there any time—has there ever been any requirement that they be there any time before 6 o'clock?

Mr. Lamb: Objection. This witness wouldn't know.

A. No requirement.

The Master: Within his knowledge.

Q. (By Mr. Nunneley) During the time you have been there?

A. No, they have only been told the actual starting time, which is 6 and 2:45, we specifically state that.

The Master: When you say "we specifically state that," who do you mean?

A. Foreman. The foreman of the particular department there.

Q. (By Mr. Nunneley) Did you so state it to the employees?

A. I have.

Q. Now, Mr. Fitton, have you attended foremen's meetings?

A. Regularly.

Q. And how often are foremen's meetings held?

A. Every Tuesday.

Q. At those meetings, do you know whether there was any discussion of the Wage Hour Act?

A. Very much.

Q. And who discussed it with you?

A. Mr. Doll always took the floor.

Q. And were directions given to you, as foremen, what to do regarding it?

A. Yes, sir.

Q. Can you tell us in general what the directions were?

* * *

A. And the labor law, when it was in effect, of 44 hours, we were instructed to tell the employees to hold under 44 hours, they weren't to go over. And at the expiration of the 44 and the coming in of the 42, we were told likewise. Also at the expiration of the 42 and the coming of the 40, we were always told to hold them under there so that they could have a leeway of three-quarters of an hour or an hour.

Q. (By Mr. Nunneley): Whether or not those directions were carried out, Mr. Fitton, to your observation?

A. To my knowledge they were.

Q. Of the people you had under your control?

A. Yes, sir.

Q. And you say your work was in the clay department?

A. In the clay shop, clay department.

Q. How many people, approximately, would be under your jurisdiction?

A. Well, prior to the machine I would say about 75 to 85 people. I have had as high as 109.

Q. You have had as high as 109?

A. Yes.

Q. Were the people ever permitted to work overtime or over the legal amount?

A. No, sir.

Mr. Lamb: Objection, and ask that the answer be stricken. * * *

Mr. Lamb: All he can testify to is what he knows, obviously.

Mr. Nunneley: Obviously he can't testify to anything else.

A. To what I know, no. The answer is "no." * * *

Q. (By Mr. Nunneley) Do you know John Metz?

A. Yes, sir.

Q. Did he work in your department?

A. Yes, sir.

Q. And were you over him as assistant-foreman?

A. Supervisor.

Q. Do you know of Mr. Metz coming in without punching the time clock, and changing molds?

A. To my knowledge, no. * * *.

Q. (By Mr. Nunneley) Did you ever have any talk with him about that?

A. Yes, I have. In his type of work, the manufacturing was a piecework proposition and the mold change was paid by the hour—not by the hour; so much for the job. And he has asked at times, could he not work the full 8 hours on piecework and then come back and do the mold change, in which he would be getting paid twice for the same amount of time, and we have told him, absolutely no, we have no authority to allow him to do it.

Q. Do you know Earl Larrimer?

A. Yes, sir.

Q. What department did he work in?

A. Same department. * * *

Q. And what kind of work did he do?

A. He was a jigger man.

Q. And do you know whether he ever came in early and changed molds? Came in without punching the clock and changed molds?

A. Not to my knowledge, no.

Q. Did you talk to him about that?

A. I believe he has on occasions asked the same question as John Metz, could he be permitted to come in and do it on their own time, thereby allowing them to make more money on their piecework rates.

Q. And what was the direction?

A. I gave him the same answer that we were not allowed to change the ruling made, that the labor laws were made and passed by President Roosevelt and we had no authority to change that whatsoever.

Q. Do you know how the time is computed from the time clock cards, Mr. Fitton? * * *

A. Well, if they would be ringing in a trifle before six their time would be computed from 6 until the time they went out, which would be 10:30, and then they are ringing back in at 11; or prior to that, and their time would be computed from 11 to 2:30, which would be the quitting time of the department. * * *

Q. (By Mr. Nunneley) Mr. Fitton, in general you say the starting time was 6 o'clock in your department?

A. Yes, sir.

Q. In the morning, for the morning shift?

A. Morning shift.

Q. And what would you say as to whether or not the employees started to work before 6 o'clock?

Mr. Lamb: Objection.

The Master: I will take his answer.

A. No. I would say no. The average would probably take me 15 or 20 minutes to get around, and a lot of times by 15 and 20 after 6:00 some of them were just getting started.

The Master: What did they do all this time?

A. They straggled in. Some of them don't reach in

there until right on the minute, and it takes them a little time to get rearranged so they can go to work.

The Master: If an employee comes in and punches the time clock at 10 minutes to 6:00, what time will he get to the department to work?

A. Why, if he punched in at 10 to 6:00, I would say he reached there by two or three minutes to 6:00.

The Master: It would take seven or eight minutes to get to the department?

A. I would say so, according to my observation and myself.

The Master: Have you ever timed that?

A. I have not timed it.

The Master: That is your guess or estimate?

A. That is my estimate.

The Master: Then, if he gets in at two or three minutes to 6:00, in the department, what does he do after that?

A. Well, a lot of cases he has to wait until the finisher gets there.

The Master: Can't he get ready in the meantime?

A. Well, he is ready, but he can't work until the whole crew is there.

The Master: Just what does he do when he gets into the department at two or three minutes to 6:00? What is his next step? Does he wait for the finisher or do something in the meantime?

A. He just takes off his shirt and usually waits in the meantime.

The Master: You said something about tools.

A. He has a scrapper and usually bends that. It takes about a second to bend that over.

The Master: Are there any other sort of odd jobs he does?

A. No, he has no odd jobs. The water is brought to him, and the clay is brought to him. Everything is ready.

The Master: If the finisher came in at two minutes to 6:00 and arrived in the department at the same time, what would she do?

A. If she came in at 10 to 6:00 I presume he would try to go to work, but as a rule she never got in; she is on the last end of the line. As a rule there are about 300 punching in the same clock, and it is impossible for the last ones punching, which was the finishers, to get in anywhere before 6 o'clock.

The Master: What time, according to your best estimate, would be the average time that the finishers would punch in the clock?

A. About one or two minutes to 6:00.

The Master: They would punch in the clock at one or two minutes to 6:00?

A. On the average, yes, that would be my estimate on the average. They are on the last end of the line.

The Master: Then it would take them 7 or 8 minutes to get over—

A. (Interrupting) As I have stated before, it is sometimes 10 to 15 to 20 minutes after 6:00 before they are under operation.

The Master: Go ahead, Mr. Nunneley.

Q. (By Mr. Nunneley) Mr. Fitton, you say before you were a foreman you were a jigger man?

A. Yes, sir.

Q. And what is a scrapper?

A. A scrapper is a piece of metal that you bend at a certain angle to run this piece of where it is polishing to trim the outer edge off the heavier scrap to make a finished edge, that makes it look like a dish; it is an excess clay.

Q. Does each jigger man have a scrapper?

A. It is a tool that a jigger man can't get along without.

Q. During how many years have you been there?

A. I have been there around 15 years.

Q. Are those tools always cared for by the jigger man?

A. To my knowledge they have always been cared for by the jigger men, at least while I was there.

Q. Who owns them?

A. Who owns the tools?

Q. Yes.

A. The jigger men themselves.

Q. They are personal tools?

A. They are personal property, the jigger men have.

Q. The same as a carpenter has a saw?

A. Under the same circumstances, the same as a bricklayer has his own trowels.

Q. You say he has to bend them over in the morning?

A. Usually he brings them in straightened down and he bends them to suit whichever piece of ware he is going to make. Sometimes the different shape of ware will take a different angle of a scraper, depending on how the edges runs on it.

Q. And he changes that to fit whatever he is working on?

A. That is right.

Q. Does he sharpen them, does he sharpen them himself?

A. Yes, he sharpens them himself too.

Q. Does he do it there or bring them in sharpened?

A. Well, I have seen it done both. Some will do it at home and some will bring them in and make them right there.

The Master: When do you get in the department in the morning at the 6 o'clock shift?

A. I would say I get in about 20 to 6:00.

The Master: Do you have to punch a clock too?

A. No, sir.

The Master: Do you come to the department by the same route that the employees take?

A. I do.

The Master: And then what did you do after you get in?

A. Why, we check up to see that all the jobs are in running order and ready to go.

The Master: Well, do you make the rounds of the department beginning at any particular time after you get there to see that the employees have started work, going ahead?

A. I try to be on the line at 6 o'clock; there is a little work to be done that you may have—that you want to note down something, and probably—I do try to be out on the line at six to see that they are getting in and ready to get started.

The Master: Is there a clock in the department?

A. Is there a clock—several.

The Master: Are those company clocks or just clocks that the employees have?

A. Well, there are in the department, I think there are three electric company clocks.

The Master: Have you had the experience of going around at 6 o'clock and finding most of the employees busily at work?

A. I never had that experience.

The Master: Have you had the experience of ever finding any of them at work at 6 o'clock?

A. Well, no, very seldom that you would see anybody ready to go at 6 o'clock. As I have stated before, I would make one round and it would be 20 after 6:00 before you would actually see everybody under production.

The Master: Do you know if you, any time in the 12 or 13 years—let's not go back 12 or 13 years, the last three or four years, that you have seen any employee at work previous to 6 o'clock, or at 6 o'clock, when you start making the rounds of the department?

A. No, I can't say as I have.

The Master: Have you seen any employee fixing up his tools at that time?

A. Oh, yes, I have seen them making their scrappers, which is a part of their own work.

The Master: Do you ever tell them not to do it until 6 o'clock rolls around?

A. No, I don't know as I ever told them.

The Master: How long before six would they be making the scrappers?

A. Oh, probably one or two minutes.

The Master: As much as ten minutes before 6:00?

A. No, sir.

The Master: Five minutes?

A. No, sir.

The Master: All right, Mr. Nunneley.

Q. (By Mr. Nunneley) Now, you spoke about going around by the jobs; what do you mean by the jobs, Mr. Fitton?

A. I make a round to see that everyone is there and every crew, that is a full crew, and in some cases where they don't have a full crew one is missing off of one crew, we try to double the crew up so those that are there will have the opportunity to go to work.

Q. When you speak of them as "jobs," do you mean individual jobs?

A. Yes, sir.

Q. What do you mean by that?

A. The individual job is the jigger man, batter-out and finishers.

Q. You spoke about a mangle.

A. That is a job, that is where they work on a mangle.

Q. They work on a mangle?

A. That is right.

Q. When you spoke about going along and looking over the job, you meant to see if the groups were working, is that correct?

A. Every individual group, yes, sir.

Q. And it is part of your work to inspect and go along and see if everybody is ready to work and the work is going on, is that correct?

A. That is part of my job, yes, sir.

Q. And if the batter-out shouldn't happen to show up for a given crew, what do you do about that?

A. Well, if there is an odd batter-out or jigger man, I would put them together, if not the rest of the crew would have to go home.

Q. In other words, if any one of the three isn't there, either the batter-out, the jigger man or the finisher, they can't work unless there is somebody else late in some other crew so you can put them together, is that correct?

A. That is correct.

Mr. Nunneley: Take the witness.

Cross Examination

By Mr. Lamb:

Q. Mr. Fitton, did you appear here in response to subpoena?

A. Did I appear here in response to a subpoena?

Q. Yes.

A. No, sir.

Q. Who asked you to come down?

A. Mr. Doll asked me to come down.

Q. Mr. Doll, as I understand it, told you that you were represented in this suit or a suit in Toledo against Mt. Clemens Pottery Company?

A. As I understand it, this was this suit, from Toledo.

The Master: What was your answer?

A. As I understand it, I am represented in this suit.

The Master: In Toledo?

A. And it was from Toledo, as I understand it. It was filed in Toledo. I may be mistaken.

Q. (By Mr. Lamb) Let me ask you, is it your understanding that you are represented or that you have been named as a party represented in this suit?

A. As I understand it, I have been named as a party in this suit against the Mt. Clemens Pottery Company.

The Master: May I ask the attorneys for information

as to whether there is another suit pending in Toledo against this same defendant?

Mr. Lamb: There is a suit pending in Toledo on somewhat different issues and for certain specified employees only.

Mr. Boos: If the court please, I have here a certified copy from the Court of Common Pleas of Lucas County, Ohio, of a suit brought by 12 employees of the Mt. Clemens Pottery Company, including the witness, as plaintiffs, against the defendant, Mt. Clemens Pottery Company, of Mt. Clemens, Michigan, in which Edward Lamb is the attorney for the plaintiffs, and attached to which is an affidavit and attachment to obtain an order of garnishment against the defendant, S. S. Kresge Company.

Suit was started on December 5, and the affidavit made by Mr. Lamb, in which he represents that he represents these plaintiffs, was made on December 5, 1941.

The Master: Is that on behalf of 12 named plaintiffs, or does it include the Union, United Pottery Workers?

Mr. Boos: It does not include the union. It includes 12 named plaintiffs, Eric Sopha, Alice Stoll, Esther Klein, Andrew Hirsner, Mary Corby, Hiram Stroup, Virginia Weier, Carl Starner, Robert Fitton, Helen Stade, Arthur Dobberowsky, and Norman Engelbrecht, and the case number is 159,790. The ad damnum was $40,000, for work and labor. * * *

Q. And if the batter-out and jigger man and finisher were all there at 10 minutes to 6:00, they could go to work?

A. If they were all there, that would be possible. * * *

Q. Now, as I understand it, just to clarify this point which I am not familiar about, you say that you never signed an authorization in an action which was filed down in Toledo in which you appear as one of the parties plaintiff?

A. That is right. I never signed any.

Q. You didn't sign it. So that if there is any signature purporting to be yours, you deny that you signed it?

Q. I will check that. As I understand it, too, you said that you didn't punch a time clock; is that correct?

A. That is correct.

Q. You say you usually plan to be there at 20 minutes to 6:00. Do you come down through the place marked,—past the place that is marked time clock B, or the place marked time clock A?

A. Down by time clock A. * * *

Q. Have you ever timed yourself to find out how long it takes you to go from the time clock to your department?

A. I have not actually timed myself, but just from personal knowledge, I have watched that thing, traversed it for 16 years, and it is practically indelibly marked in my mind about how long it would take me.

The Master: Can you state as to what kind of a gait the employees generally use in walking from the time clock to the department, as to whether they walk with a regular gait or amble along, or walk along slowly?

A. They walk slowly, walking out you have to practically hold them down to keep them from running.

The Master: So that the time elapsed in getting out is probably considerably less than the time getting in?

A. The time elapsed getting out is considerably less than the time getting in; they walk slow coming in and we have to pretty near hold them back so they don't hurt one another or get hurt running out.

The Master: Is that true of coming back from lunch, do they come in slowly and at night leave very rapidly?

A. That is true. * * *

Q. Well, now, how far is it from the clay shop to the time clock A, for instance?

A. Well, there are various places in the clay shop, the furthest end would be between eight and nine hundred feet, I would say, in the clay shop.

Q. And the closest?

A. Probably around between 350 and 400, I am not definite.

Q. You say it takes you how long to walk 400 feet?

A. Well, I would say it takes me to get to where I go, which is about the middle, about 6 minutes.

Q. It takes you 6 minutes to walk 400 feet?

A. Yes, walking, taking my time.

Q. I will say you are taking your time. That is all.

Re-Direct Examination

By Mr. Nunneley:

Q. Mr. Fitton, from the place where you are stationed in the clay shop, you are back there at 20 minutes to 6:00, can you see the time clock?

A. No, sir, positively not.

Q. So that your testimony and your knowledge is based on when they get back there and not when they hit the clock, is that correct?

A. My testimony is based when they arrive in the department.

Q. And you can't see them punch the clock or know what time they punched in?

A. No, sir. • • •

Q. You do know what time the employees get there, don't you?

A. I do know that.

Q. And what time they get back into that department?

A. That is right.

The Master: How do you know that?

A. Why, I carry a wrist watch all the time. • • •

Q. (By Mr. Nunneley) Now, Mr. Fitton, in the clay shop here are these various machines and mangles and things setting around in there?

A. There are machines, yes.

Q. Can you pass around among them to see what the people are doing?

A. Yes, you can.

Q. And so that there are passage ways that can be used other than the aisles?

A. There are passage ways other than the regular aisles, yes.

Q. For carrying his ware, or his material carried around to the machines?

A. That is right, there is a passage way between every machine.

Q. Mr. Fitton, did you ever authorize anybody to start a suit against the Mt. Clemens Pottery Company in Toledo?

A. No, sir.

Q. Or to make any affidavits on your behalf in that connection?

A. No, sir. * * *

Q. (By Mr. Nunneley) By the way, are there any other Robert Fittons employed at the Mt. Clemens Pottery?

A. No, sir.

Q. Have there ever been any in the last 10 years that you know of?

A. No, sir, not to my knowledge.

Mr. Nunneley: Take the witness.

Cross Examination

By Mr. Boos:

Q. Did you ever authorize any lawyer in Toledo on your behalf to start suit and garnishee the S. S. Kresge Company for $40,000?

A. No, sir.

Q. Did you ever authorize any lawyer in writing or otherwise—

A. No, sir.

Q. (Continuing) —to bring any suit for you in Toledo against anybody?

A. No, sir.

Re-Cross Examination

By Mr. Lamb:

Q. Do you say that you are represented in this suit?

A. I stated I wasn't sure what suit; I understood I was represented in a suit against the S. S. Kresge Company.

Q. You understood that from Mr. Doll?

A. That is right, in a suit.

Q. But you don't claim that you are represented in this action pending in this Federal Court, do you?

A. I claim my knowledge is very vague on which suit.

Q. It seems to be. Now, you said that you could tell what time the employees arrived there because you had a wrist watch?

A. That is right.

Q. Will you tell us, is Earl Trombley an employee in the clay shop?

A. No, sir.

Q. Who are some of the employees in the clay shop?

A. Earl Larrimer is an employee.

Q. Earl Larrimer?

A. Earl Larrimer is an employee, yes, or was.

Q. Will you tell us what time Mr. Earl Larrimer worked and arrived at work and started at work in the clay shop on January 7, 1940? * * *

A. No, all I could imply is the average starting of the employee.

Q. I am asking you whether you mean to advise the Master that you are able to tell him what time a particular employee started to work any particular day?

The Master: Just answer it yes or no.

A. I can't, no. * * *

Re-Direct Examination

By Mr. Nunneley:

Q. Do you know whether Earl Larrimer started to work regularly before the starting time?

A. No, I can't say as any employee ever worked regu-

larly before the starting time. They vary. Sometimes they come in later, sometimes—they just vary as the time goes on.

Q. You don't know what time they punch their clock, to the minute, do you?

A. No, I do not.

Q. And you do know approximately what time they arrived at your department?

A. That is right.

Q. And as to any individual employee in the department, can you say that any of them regularly worked before the starting time?

A. No, I can't say that they did.

The Master: Can you say that they didn't, that nobody in the department did?

A. I can't say that nobody in the department did regularly start before the starting time. Was that the question?

Mr. Nunneley: That was the question.

The Master: Some of them may have started regularly before the starting time, in other words?

A. I can't say as they did.

The Master: Is it possible from your recollection that some of them—is it consistent with your recollection that some of the employees in the department could have started regularly to work prior to 6 o'clock?

A. No, they couldn't. No one person nor one group could consistently start early.

The Master: Why?

A. Variable conditions. Their crew would not all be there all the time at the same time. That would be, I would say, an impossibility.

The Master: You stated that you would go around at 20 minutes after 6:00, start around at 6:00 until about 20 minutes after 6:00, some of the employees in the department still would not have started their production work?

A. They would just nicely be getting under way, yes, sir.

The Master: Suppose at a quarter after 6:00 you came

across one group of batter-out, jigger man and finisher who hadn't started their work at that time, would you say anything to them?

A. No, sir.

The Master: Wouldn't you tell them they were late getting started?

A. No. I might inquire what their reason was or if there was some trouble, and if there was no trouble I went on by and let them get started.

The Master: Why would it take them till quarter after 6:00 to get started?

A. That I couldn't state.

The Master: As I understand it, it was a common, every-day occurrence that some of the crew wouldn't get started until quarter after 6:00, because you said until 20 after 6:00 the whole group would not be working. Now, from your observation of the department, can't you state what could or what would cause the particular crew not to be able to start until 6:15?

A. Oh, yes, the lateness of one of the crew arriving on the job.

The Master: Is that the only reason?

A. That would be the biggest reason.

The Master: Would there be any reason that pertained to the work on the job, getting ready?

A. No, sir, there is not much to get ready. It is all got ready for them.

Mr. Lamb.: If the lateness of one—

A. (Interrupting) The lateness of one of the crew arriving. Probably stopped in to talk to somebody. The lateness of one of the crew would detain the whole crew.

Mr. Lamb: Wouldn't this lateness be indicated by the time card?

A. It would.

The Master: You would not say anything to any crew that started at 6:15, even though you knew one of the crew was late coming in?

A. I might mention to him that he should get up a little earlier so as not to keep the rest of the crew back.

The Master: Wouldn't the rest of the crew be complaining to you about the situation?

A. They usually took care of that between themselves pretty well.

Q. (By Mr. Nunneley, continuing) On the way from the time clock department there is nothing to stop them visiting with each other, or others along the way, is there?

A. No, and invariably they did. In the morning you would see them grouped together, three or four, and talk over—whatever they were talking over I wouldn't know—but there was nothing to prevent them from visiting, which invariably they did.

Q. Was that a common practice when they come to work?

A. Oh, a very common practice to see them grouped three and four in a bunch talking.

Q. Did they speak to each other and talk to each other as they come in while they are getting ready to work?

A. That is right; stop by the bench and talk over something they noticed, or had something to talk about.

Q. How are they paid in that department?

A. They are paid on a—you mean what basis?

Q. Yes.

A. They are paid on a piecework basis.

The Court: Was that based on the individual,—what they turned out?

A. That is based on the group.

The Master: On the group, meaning—

A. (Interrupting) The three together would actually take care of the earnings of the group together. The piecework was so much for the one, so much for the other, and so much for the other. So much for the total operation.

Q. (By Mr. Nunneley) Did everybody in that department work on a piecework basis?

A. Everybody except the sweeper.

Q. And that piecework, you say, is in the case of the batter-out, jigger man and finisher, that is based on what the three of them produce?

A. That is based on what the three of them turn out.

Q. And in the case of those who worked on the machines, how is that based?

A. That is also based on what the machine turns out. Piecework basis excepting the operator, which is an hourly rate.

Q. The operator himself is hourly?

A. The operator and the man in front are hourly rate, and the girls are based on a piecework basis.

Q. Mr. Fitton, what can you say to the time they stopped work in the afternoon?

A. Well, that would range—if, now, you take on a piecework basis, and I will try to outline this to you how they stopped. They are paid by the board—

Mr. Lamb (interposing) Just a second. • • •

Mr. Nunneley: Do you recall the question now?

A. Yes, I recall the question. The answer was going to be that they are paid on so much per board or so much per hundred boards. Now, we will say that they came to 20 after 2:00. They had not done—they had not time enough to make one more board, so they would leave it. There is a possibility of it getting destroyed, or some other person taking it coming on the next shift, so they do not make another board. They quit, clean up and go out, and you see them going out anywhere from 20 after until 2:30, depending on how their boards would vary, run. They never make it over, and make it for the next crew to take.

Q. In other words, they can leave the department before 2:30, for instance?

A. Yes, they can leave the department any time they have their quota. In their 8 hours there is a certain production that they can turn out. Once they get that pro-

duction they can leave. If they get it a 1 o'clock or 2 o'clock they can leave when they have their production.

Q. Are they permitted to work after quitting time?

A. No, sir.

Mr. Nunneley: Take the witness.

The Master: Mr. Fitton, as to the instructions that you gave the employees working under your direction in the department as to the time they were to report in the morning, did you tell them that they were supposed to report at such time that they would get in the department at their particular job by 6 o'clock.

A. No, sir. Whenever they would ask I would always say, now, be on the job by 6 o'clock. I never gave them any specific time to ring in, only that they should be there by 6 to get started. It was immaterial to me when they rang in.

The Master: When you told them that they should be on the job by six, what did you mean by "on the job"?

A. At their job ready to go to work at 6 o'clock.

The Master: Did you ever tell any of them that they should be in front of the time clock at 14 minutes to 6:00?

A. No, sir.

Re-Cross Examination

By Mr. Lamb:

Q. I don't think I understood your testimony, Mr. Fitton, when you said in response to a question by Mr. Nunneley that occasionally people stopped and visited on the way—

A. (Interrupting) That is right.

Q. (Continuing) —between the time clock and the job?

A. There was nothing to prevent them from visiting on the way in.

Q. You said, as I understood it, you have seen people stop?

A. I have.

Q. And was that a frequent occurrence?

A. That is very frequent, yes.

Q. And you also said, in response to a question by the Special Master, that it wasn't necessary for you to mention the fact that they were being late—

A. That is correct.

Q. (Continuing) —because the other people in the group would take care of it, is that correct?

A. That is right, on the piecework basis.

Q. You meant by taking care of it, they would raise such a rumpus that not one of them would be dallying at the expense of the others, is that true?

A. Yes, that is correct. • • •

CARL L. STARNER, was thereupon called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows: • • •

Direct Examination

By Mr. Nunneley:

Q. Where do you live, Mr. Starner?

A. On Kendrick Avenue in Mt. Clemens.

Q. And how long have you lived in Mt. Clemens?

A. Since May, 1923.

Q. And where are you employed?

A. Mt. Clemens Pottery.

Q. How long have you been employed there?

A. I started there in May, 1923.

Q. What kind of work have you done during this period?

A. Well, I have worked around through the plant, to start with, and then I worked in the clay shop as batter-

out and jigger man. Then I was made foreman in that department.

Q. And you have been a foreman in the department how long?

A. I guess it will be on 18 years.

Q. Around 18 years?

A. That is right.

Q. Did you yourself ever work in any other pottery?

A. No, I haven't actually worked in any other pottery.

Q. Have you had occasion to learn something about the practices in other potteries?

A. Well, I have a brother-in-law and a sister working in a pottery, before I worked in the pottery, and I have been around there quite a bit with them and was quite familiar with the pottery operations. And the practices which they had.

Q. Where is the pottery that they work in, your brother-in-law and sister?

A. In Ohio.

Q. What town?

A. New Lexington, Ohio. * * *

Q. (By Mr. Nunneley) What kind of ware did they make where your brother-in-law and sister worked?

A. They made dinner ware there at this pottery.

Q. A similar type of ware that is made at Mt. Clemens?

A. Yes, except they make porcelain. We make semi-porcelain ware.

Q. Now, Mr. Starner, what is done in the clay shop at the Mt. Clemens Pottery?

A. You say what have I done?

Q. I say, what is done in there? What was done?

A. What are the operations? Well, all the ware that is made is formed in the clay shop, in the clay state, and then it is dried there in the clay state before it is sent to the kilns to be fired. All the forming of the ware is done in the clay shop.

Q. Now, Mr. Starner, in asking you questions and

making your replies I wish you would bear in mind that all questions, unless otherwise specifically stated, will refer to the period before April 14, 1941, at the time of the first strike and before the starting of this suit. I just make that statement in order to have it clear and in order not to have to state it all the time.

Now, Mr. Starner, you were foreman in the clay shop during the period for several years prior to April 14, 1941, were you not?

A. That is right, sir.

Q. And do you recall, were there foremen's meetings held at the pottery which were attended by the foremen?

A. Yes, sir, we held meetings there regularly every Tuesday, and meetings in between.

Q. Who, generally, took charge of or presided at those meetings?

A. The general-manager, Mr. Doll.

Q. At those meetings did you have any occasion to discuss any law relative to hours that could be worked by the employees?

A. We certainly did. * * *

Q. (By Mr. Nunneley) And what, if any, directions or instructions were given you relative to the law about the amount of time that could be worked?

A. Previous to the law that was in effect, that took effect in 1938, we were told to keep the employees' hours under 44 hours. And then previous to the time in 1939 when the law was to take effect that they were not to work over 42 hours except for extra pay, why, we were told to prepare our departments to be in accord with that law, which we did ahead of time. And, likewise, when the law was changed to 40 hours, we were instructed to make our departments ready to comply with that rule that we were not to exceed 40 hours a week.

Q. Were those instructions obeyed?

(Objection overruled.) * * *

A. We called our people together in the departments and instructed them that they were not to ring or work

over 40 hours a week, and we told them what time to start in the morning and the time their hours would be up, the time their lunch period would be, and they were not to exceed that time. Any under that time, why, we agreed to it, it was all right, but they absolutely could not go over 40 hours.

The Master: Did you say "we called the people together in our departments"?

A. We called the people of the departments together and instructed them in a general way.

The Master: That is your department?

A. In our department. And then we practiced telling them individually. There would be questions asked, or we thought someone was in mind of breaking those rules, why, we would instruct them accordingly individually. That seemed to be necessary at the start, that is, prior to the time the law took effect. We started this along in August.

Q. (By Mr. Nunneley) Mr. Starner, during that—can you tell us how many hours your department was working before the law took effect at all?

Mr. Lamb: Objection.

Q. Just immediately before?

Mr. Lamb: Objection.

The Master: I think I will take his answer.

Mr. Lamb: It is entirely immaterial.

A. We complied with the law before the law actually took effect, your Honor. When the law was put into effect, Mr. Doll made the statement that seeing that that was the sense of opinion of the public and the country, why, he was in accord with it and wanted us to immediately make arrangements for that. So we actually practiced that rule, so it was actually in effect, so it didn't affect us, really, when it came along. We had been set for it and had been practicing it. * * *

Q. (By Mr. Nunneley) Now, Mr. Starner, in your clay shop during the period before the first strike, how many shifts were there?

A. In the clay shop, there were two shifts.

Q. And what were the hours of those shifts?

A. Worked 8 hours each shift. The first shift starting at 6 o'clock in the morning and quitting at 2:30 in the afternoon; the second shift starting at 2:45 and quitting at 11 o'clock in the evening.

Q. And was there a lunch period?

A. One-half hour lunch period in each shift.

Q. What time did you come to work there during that period?

A. I always was there shortly after 6:30 in the morning, somewhere between there and 20 minutes to.

Q. 6:30?

A. Shortly after 6:30.

Q. Were you there after starting time?

A. I mean 5:30 in the morning. Pardon me.

Q. Did you sometimes have supervision of the afternoon shift?

A. Yes.

Q. Or did you always have the morning shift?

A. No, we had both shifts. I have worked on both shifts.

Q. And what time would you report to work yourself if you were on the afternoon shift?

A. I always came in around 1:30 or before.

Q. Now, Mr. Starner, what would there be for you to do in the morning before the shift started?

A. Well, I always liked to get there early because we had one or two fellows there to put clay on the benches for the fellows to work with, and if that clay wasn't on the benches ahead of time, he couldn't possibly get around to all of them in a minute. So, I always was in there early to make sure everything was ready so that the people coming in at 6 o'clock could start to work at the regular time. So I was always in there and checked over to see that everything was all right before they came in.

Q. In other words, among other things you saw to it that the prepared clay was at the stations?

A. That is right.

Q. Where the batter-out and jigger men worked, in order that they could start, is that right?

A. That is exactly right. And they had electric dies they used in operating the machines, and we had to see that they were turned on and made hot, steam. Quite a few things we wanted to check over before the people came in.

Q. Were those dies turned on before the people came to start to work?

A. Yes, sir.

Q. And they heated the clay? They are hot when they come down on the clay? That is the thing the batter-out uses?

A. That is right. He has to heat the dies in order to flatten the clay out the way it is supposed to be, and it takes time to get those things hot.

Q. You saw to it that those were turned on and the clay applied?

A. That is right.

Q. What, if anything, did you have to do with the people working, as to starting to work or seeing that they were working? What did you have to do with that?

A. Well, I over-saw the fact whether they were there at work or whether they got ready to work. If there were some missing, we would have to fill in here and there to make sure that they were grouped up as they would have to be in order to be able to work. They worked in groups, in groups of 3, so we had to have a complete crew there so we could get them started.

Q. What time would you say that the people in general in your department got started to work?

Mr. Lamb: Objection.

Q. On the 6 o'clock shift?

The Master: I will take his answer.

A. Well, they were all working piece rate, and probably, to explain it this way, on the average the people would actually get started a little bit after 6 o'clock.

The Master: When you say "actually get started," do you mean started on the production work?

A. That is right.

The Master: They had certain preliminary work to do?

A. Yes.

The Master: In changing uniforms, and so forth?

A. That is right.

The Master: You don't include that as time started?

A. No. Sometimes they might not take as much time with their preliminaries as they would other times, so really I was observing more or less the time they actually started production.

Q. (By Mr. Nunnéley) And what would be the preliminary the Court asked you about? What would they consist of?

A. Well, these people grouped together in such a way that they would be quite close together, and there would be quite a lot of, oh, jabbering around, and they would take off their shirts and get ready to work for the day, and have to sharpen their scrapping tools if they did not have them sharpened before they came in. Those things that had to be filed and bent just in a certain way in order to scrap the surplus clay off the forms when a piece of ware was put on there, and really there wasn't much preparation to it. It was just a matter of making up their mind to go to work. It seemed like they always—

Mr. Lamb (Interposing): Objection, what it seemed like to him. • • •

The Master: Just tell what happened.

A. It is quite customary for folks to congregate more or less there in the aisleway or between the jiggers and converee one with another. There are quite a few of them are hunters and fishermen, and they like to tell about the fish they caught.

Mr. Lamb: Objection unless he identifies who was doing this. There isn't any point having him give a self-serving declaration of this sort.

The Master: Well, I think if this has been his obser-

vation I think he can give general testimony and you can explore it on cross-examination if you want to find the specific persons that he overheard.

A. The people would be talkative, and being friendly with them I would be there entering into their conversation right there in the midst of them. And it wasn't never,—didn't ever tell anybody that they—bawl them out or any such thing as that for not starting right on the minute, because they were all working piece rate and as long as they were monkeying around getting ready to start work we just left it go like that. * * *

Of course, there is a certain amount of time taken up by visiting back and forth, of which we never objected to, after arriving in the department. And then, of course, there is changing uniforms. Then there is those individual tools which they use. The jigger man has a scraper that he is permitted to sharpen in the department if he wants to and bend it so that it will be ready for use. The batter-out, he has what we call a block scraper that he uses to scrape the block with, and he usually scrapes the block some before he starts to work. Just a matter of a minute or so.

Of course, they take their time in getting ready to start work. A fellow comes in and he has got so much to say, then he wants to stretch awhile and yawn—

Mr. Lamb (Interposing): Just a second. I think he should discuss—

The Master (Interposing): Just state what you observed there, not what they want to do. Do they stretch and yawn? If you can say that, say that.

A. Nearly every morning you hear somebody say, "Well, I don't want to work today," and he stretches out. "Shall we go fishing?" or something like that. Every morning you hear it. They do it just for fun, of course, but that is actually the case. He was asking me to describe it, your Honor.

Mr. Nunneley: That is right.

The Master: Yes. Just describe it as it happens.

Mr. Nunneley: Go ahead and tell us.

A. Of course, we never objected to the fellow, if he doesn't get ready on time, because it is actually piecework and if he doesn't get started on time, he loses. If we are behind on production and if it is too long, we might say, "We are a little short on production; we would like to have you get started, if you can. If you are not ready to work, we will see what we can do to correct any condition that is wrong." That is about the best way I could describe it. * * *

The Master: According to your best recollection, what time on the average would the first employee start to come into the department?

A. Well, usually, as near as I could recall, I didn't actually just check by my clock, by the clock or my watch, but as nearly as I can guess it would be around 10 minutes to before anybody would come in there, then they would come stringing in, maybe one, maybe two, one or two more, and then some more; they wouldn't all come in at the same time.

The Master: By ten minutes to six you had generally completed your work making the routine check around the departments to see that the supplies were on hand and everything was ready for the day's work, by ten minutes to six you completed that generally?

A. Well, I would have that completed even before that; I would be there by the benches where the people work even before that, possibly quarter-to.

The Master: When the employees started to come in, what were your duties from then to six o'clock?

A. To see if they were all there and ready to run all the jobs, had enough people to run them, and get them started, because the people work in groups and if some member of some group wouldn't be there, naturally the first thing we would do would be right there to pair up them with some other group.

The Master: How long would you wait before you would do that?

A. We wouldn't wait only long enough to find out if certain ones were not there, were not going to be there.

The Master: Would that be at five minutes to six, if one group wasn't complete at five minutes to six, would you go out and get somebody else to take the place of the missing one?

A. No, we would look around through the department and see if anyone else was missing, and sometimes there would be an entire crew missing, and you would take crews to make up a crew; for instance, a finisher may be missing on one crew and a batter-out on another, and jigger man on another, so you would put the ones that didn't have a helper all together.

The Master: Was any whistle or any other signal blown at 6 o'clock?

A. Well—no, we didn't have a whistle blowing at 6 o'clock.

The Master: How did the employees know when the time had come when they would start work, if they were supposed to start production work at 6:00?

A. Well, we had several clocks around through the department, and nearly everyone's bench had a watch or clock on it of some kind, and never needed to worry about the time because it was always more or less before you there.

The Master: Was there any particular time, say 10 minutes to 6:00, five minutes to 6:00, 6 o'clock, or five minutes after 6:00, or a quarter after 6:00, that you regularly looked around the department each day to see whether or not everybody had started work?

A. Well, that would be my duties from the time—

The Master (Interposing): Was it your duty to look around, or did you look around at any fixed time every day, or did you simply look around generally from the time you completed your check at about a quarter to six, or for the next half-hour?

A. Why, from the time the people start coming in there we just notice up and down the line to see whether the

jobs would get filled up, and I could see most of them there as they came in, and seldom run around through the department to pair them up until after the starting time. I would at least wait until six o'clock before doing that because somebody might be—even after six o'clock—coming in, unless they told me definitely. A jigger man may come in and say I have heard my batter-out isn't coming today, or maybe somebody would tell you, well, there may be three or four different boys missing in the department, and you would try to figure out how to put these people together so that they could go ahead and go to work. But, quite often after six o'clock, when you had to get replacements, it would be that time before you got started.

The Master: Did you go around, say, at 6 o'clock sharp, start making a routine trip to all the work places in the department to see if everybody was there, or did you simply—was that flexible? Did you simply go around, walk around the department for, say, 15 or 20 minutes beginning at 10 minutes to six, and wherever you observed anybody absent I suppose you dealt with it just as it came up?

A. That is actually about the way it works, because in general you couldn't wait there until a specified time. I tried to keep in touch with the whole situation from the time they start coming in until they were all going.

The Master: You did not simply keep looking at your watch?

A. Did not follow any certain routine on watching my watch, or looking at the clock, or anything of that kind. Just keep in touch with the whole situation and make any replacements as they became necessary at that particular time.

The Master: I will just ask the question directly, you didn't, then, at 6 o'clock sharp—

A. No.

The Master (Continuing)—go around the department and make a routine trip to see whether everybody was at work at that time?

A. Not at six o'clock sharp; no.

The Master: Go ahead.

Q. (By Mr. Nunneley) As I understand, then, you were there when people began coming in. If somebody came in and told you their batter-out wouldn't be there you would start in and try to figure out where to get another one?

A. Yes. You have to figure out who to get. You can't put anybody with anybody. They have to be paired up according to their experience and ability, and sometimes it is pretty difficult to figure them out.

Q. The same would be true if someone would come in and say, "My finisher isn't coming today," you would have to find them another finisher?

A. That is right.

Q. Now, if no word was brought about—in other words, if no word was brought that somebody was going to be late, or wasn't coming, nobody told you that, how long would you wait before you would endeavor to mark them absent or replace them?

A. Well, we would wait an indefinite period. We would always wait until after 6 o'clock before we would even think they weren't coming, because quite often they would come in five minutes late, 10 minutes late, and then we would begin to think about it pretty serious. If they were 10 or 15 minutes late, then we would start to figure out how we could pair them up. If we hadn't heard from them at all even that late, quite often they would come in. People will be a little reluctant to pair up because they will say, "Oh, my batter-up is just sleeping in this morning and he will be here ultimately," and you kind of rather wait for him, even waiting as much as a half-hour rather than start work with somebody else.

Q. About how many employees were in your department that you had to check up on?

A. Around a hundred.

Q. That is just your part of the department, is that correct?

A. That is right, yes.

Q. During the period between the time folks might get into the department, and the time they actually started, did they have occasion to confer with you on any matters, any of them? * * *

A. Yes. Anything like that at all, they are always free to come and talk it over at any time, even before starting.

Q. If you were advised that people were not going to be there and you didn't do anything about it until after six o'clock, what would be the effect of getting production out, getting production started in the department?

A. It would interfere with production if we didn't get started on time, because we still allow them to ring out of the department at the regular time, because where there would be one missing, the other two would be there, and you couldn't stretch the hours out, because it would run the two over. * * *

Q. (By Mr. Nunneley) Did the employees generally in your department start work before the established starting time—

Mr. Lamb: Objection.

Q. —of six o'clock? * * *

Mr. Lamb: That assumes the very question that is in issue, one of the questions in issue about the established starting time. I think the question re-worded, or at least simply stated that 6 o'clock—I certainly insist that the established starting time is one of the issues in this case.

The Master: I will take the answer subject to the objection. Will you answer it now?

A. The people didn't generally start before 6 o'clock. The people all wouldn't be there until just about 6 o'clock, because it would take several minutes for the amount of people to ring in that was coming through this particular time clock, and while there might have been—it might have been so, or it was so and is so, that people get there as much as—probably as early as ten minutes to, but they are few, they string out from that time up to the starting time of 6 o'clock, and we never insisted on them starting before 6 o'clock. In fact, we insisted that they didn't start before 6 o'clock, start to work. We didn't care

if they rang in 14 minutes to. We told them to ring in in time to be there at 6 o'clock; that was the general rule, and we made that very plain to every individual in the department. * * *

Q. (By Mr. Nunneley) Mr. Starner, what would be the established time for the start of the lunch period when the starting time in the morning was 6 o'clock?

Mr. Lamb: I object to the question on the ground that there isn't any evidence of an established quitting time. * * *

A. The lunch period always was 10:30, when the starting time was 6.

Q. (By Mr. Nunneley) And did the people generally work after 10:30 before stopping for lunch?

Mr. Lamb: Objection.

The Master: I will take his answer.

A. No, the people didn't work after 10:30, in fact they would quit often—well, they would be ready to go right at 10:30.

Q. And what would be the—

The Master: Did you keep tab on that? How do you know they were quitting at 10:30?

A. I have seen them, I have stopped and watched them time and time again. They would leave the department at 10:30. They all seemed to be very anxious to get out to dinner.

Mr. Lamb: Objection, what seems to be.

The Master: Yes, I will strike that last statement. You can just tell what you observed, and not what your conclusion is as to what seemed to you to be the case.

A. People always left the department at 10:30; all of them.

The Master: Was there any whistle blowing at 10:30?

A. There was times when we blew a whistle at 10:30.

The Master: During this period of 1938 to 1941?

A. Yes, sir. * * *

Q. (By Mr. Nunneley) And, when the lunch period started at 10:30, what time would it be time to start back to work after lunch, ordinarily?

A. The time to start back to work was 11 o'clock.

Q. Would the people generally get there and start to work before 11 o'clock, or at 11?

A. No, they were pretty slow to get back into the department at noon time. * * *

Q. (By Mr. Nunneley) And, when the starting time after lunch was 11 o'clock, what would be the end of the work day for that shift?

A. 2:30 in the afternoon. That is a specified time.

Q. Would the people generally work after 2:30?

A. No. No one worked after 2:30. They quit—they would be more apt to quit before 2:30 because they would come to the—

Mr. Lamb: I ask that that answer be stricken, that they are more apt to. * * *

The Master: I will first hear his answer, and then entertain a motion to strike.

A. They didn't like to leave any parts of boards of ware for the next two. They would like to come out even. And, it takes a few minutes to make a board of ware. And, if they figured they didn't have time enough to have a board of ware finished by 2:30 they would stop, anyhow.

The Master: Suppose they got up to 2:30 and they were in the middle of a board of ware, would they go on and finish it?

A. No, we never permitted them to work after 2:30.

The Master: What stopped them after 2:30?

A. We just simply objected to them working after 2:30.

The Master: Did you make it a regular rule of the department—

A. Yes, we did.

The Master: —to see they were not working?

A. We certainly did.

The Master: What time did the next shift come on?

A. 2:45.

The Master: There was a 15-minute interval, then?

A. That is right.

The Master: Couldn't they work on finishing up their boards for 5 or 10 minutes before the new shift started streaming in?

A. They didn't like—the shift coming in didn't like the folks interfering with them. They liked to have them out of there before they started coming in on the job. They didn't want to interfere with each other.

The Master: Do I understand you every day went around at 2:30 sharp to see everybody was putting up their work, even though they had but a little work to finish on their boards?

A. Well, I wouldn't say every day I did that, but it was the practice to see the folks got out at 2:30 and it might be that I might have checked it very carefully for several days, and there might be a day or two I might not have been there just at 2:30, but I was always there to see they were going out, because I was right in the department at all times.

The Master: Was that your responsibility?

A. Yes, sir.

Q. (By Mr. Nunneley) And this afternoon shift, their starting time, you said, I believe, was 2:45?

A. That is right.

Q. So that during that 15-minute period, the two crews, one crew would be coming in and one crew going out, is that right?

A. That is right.

Q. All going to the same clock?

A. Yes, they all rang out at the same clock.

Q. Have you worked the afternoon shift during this period, Mr. Starner?

A. I have, sir.

Q. Do you always have one shift, or do you alternate, the foremen alternate?

A. We alternate the shift. We don't always have the same shift. We alternate most of the time a week about.

Q. One week mornings and one week afternoons?

A. That is right, yes.

Q. And during this period, then, approximately half of the time you would have the afternoon shift?

A. That is right.

Q. Now, when the established starting time was 2:45, what time did the people generally start to work?

Mr. Lamb: Objection, unless the people that are referred to are identified.

The Master: Well, I will take his testimony. It is on the general conditions here.

A. The people wouldn't start before 2:45.

Mr. Lamb: I ask that be strisken.

The Master: In each case where you are asked as to what time they started to work, and you give your answer, you mean production work?

A. Yes, that is what I was referring to.

The Master: You are not talking about, now, any work they may have done, that is, any work getting ready to do production work?

A. No.

The Master: You don't consider that to be work?

A. No, because you can't tell.

The Master: I just wanted to know about your testimony.

Q. (By Mr. Nunneley) Now, when the starting time of the shift was 2:45, was there a lunch period involved?

A. Yes, sir.

Q. And what time would that come?

A. It would come at 7 o'clock.

Q. 7 o'clock?

A. That is right. 7 to 7:30.

Q. From 7 to 7:30. And would the people, when that lunch period come, generally work after 7 o'clock?

A. No, sir.

Q. And what time would you say the starting time was after the lunch for the afternoon shift?

A. They wouldn't start before 7:30.

Q. I say what time would be the regular starting time or established starting time? • • •

A. Established starting time after the lunch period was 7:30.

Q. (By Mr. Nunneley) Would the people generally start to work before that time?

A. No, the people would not generally work before that time.

The Master: In each case, you have said repeatedly that the employees generally don't start to work before the established starting time, or would not stay after the established quitting time. Were there a number of exceptions to that general rule?

A. At lunch time the people always seemed to be ready, always was ready to go out for their meal.

Mr. Lamb: Just a second, please. That obviously is improper. He said, "Always people seemed to."

The Master: I want to find out what they did.

Mr. Lamb: He said they seemed to do things.

Mr. Nunneley: The witness is talking from his own observation of many years.

The Master: I would like to ask him these questions or I can't find out what happened. I can't guess myself as to what happened. The witness may be wrong in his recollection, but if I ask enough witnesses, I may find out what is wrong.

The Witness: Your Honor, the "seem" part, what I really mean to imply is they all seemed to be hungry at lunch time, and leave the department right on the minute.

The Master: What about coming back?

A. Coming back, they only had a half hour for lunch and they are never anxious to get back to the department, so they never start until after 7:30.

The Master: What about in the morning? Are they more likely to start before time in the morning than after lunch, do you mean?

A. No, not in the morning either.

The Master: Have you observed employees starting before the time that you considered they were supposed to start?

A. I haven't observed anybody starting ahead of time.

The Master: You never have in all your experience there?

A. You mean in the morning or lunch time?

The Master: Yes. In the morning or when they came back from lunch. Well, we will limit it in the period from 1938 on. Have you observed anybody at any time starting before the established time?

A. We would never object to a minute or a small amount of time like that. If they started, say, was ready to go ahead a minute before, we wouldn't object to that.

The Master: Have you observed some of them start a minute before?

A. You look up and down the line. You don't stand there with a stop watch. You know it is around 6 o'clock, to see whether they were all ready to start. You wouldn't notice anybody starting quite a bit ahead of time.

The Master: What do you mean by "quite a bit ahead of time."

A. Four or five minutes, something like that.

The Master: Take 5 minutes to 6. Have you ever seen anybody start at 5 minutes to 6?

A. No, I can't say I have.

The Master: Are you sure about that?

A. I am sure about that. As near as my memory goes at the time.

Mr. Lamb: What is the answer?

The Master: He says he is sure about it as far as his memory goes.

Mr. Lamb: Then your assistant foremen better check notes.

A. Well, it is pretty hard to be sure every day whether they would be five minutes or six minutes or 3 minutes or 4 minutes. We didn't really check it that close. But they couldn't hardly get started much sooner than that. They couldn't hardly get lined up. I don't see how they could do it.

Mr. Nunneley: What was the last question I asked him?

The Master: You asked him about the time they were

coming in back from lunch and I believed he answered that.

Q. (By Mr. Nunneley) And the quitting time for the afternoon shift, the established quitting time, was that?

A. Was 11 o'clock.

Q. Did the employees generally work after 11 o'clock?

Mr. Lamb: Objection.

The Master: Overruled.

A. No, they did not.

Mr. Lamb: I ask that the answer be stricken.

The Master: I will let it stand.

Q. (By Mr. Nunneley) Did you ever see any of them quit before the established quitting time, either on the morning or afternoon shift?

A. Yes, I have noticed them quit before.

Q. Did that happen on as many occasions as they might start a minute or two ahead of time in the morning?

A. I would say as many. A lot of times they would quit as much as 10 minutes before quitting time.

Q. I think possibly we have covered this matter, but what work was there for these crews to do in getting ready before production work actually started? What was there to do that they had to do?

A. Well, the jigger men would have, as I said—you mean, as before, change their uniform and put on their aprons, get their scrappers ready to work, to start to work; the batter out would have the block to look after; he takes his sponge, wipes it off, takes a scraper and scrapes it a little bit, before they get ready to start the mangle to produce ware.

Q. And those operations might take how long for either one of those people?

A. Well, it would take anywhere from, as near as I could guess, it would be from one to three minutes.

Q. And these scrapers or scrappers, as you call them, they are their own tools which every jigger man has?

A. That is right, their own individual tools.

Q. And the same applies to the tool that the batter out uses?

A. That is right; they have in the potteries supplies scrapers which they purchase themselves, and in some instances the company has furnished those scrapers to them, given them to them.

The Master: When they get through at noon what is there for them to do after they have stopped the production work, before they can leave the department?

A. Get through at noon before they leave the department, there isn't anything they really have to do, just shut off their machines.

The Master: Don't they change their uniforms?

A. And change their clothes, their uniforms, that is all. They don't have to—

The Master: Do they have to put up their tools, hang them up?

A. Well, they just take care of their tools, that is all; they wouldn't have any particular work to do at all.

Q. (By Mr. Nunneley) Normally, where do they keep the tools around the jiggering machine?

A. In a small compartment right where they stand and work they keep the tools laying on the mangle right beside them, reach up and get them on the ledge, and their bench by them.

Q. They don't have to go anywhere to reach them, or put them up at noon?

A. No, they don't, they keep them right by them.

Q. What do they do at night?

A. They leave them on their job, or keep them in their pocket, if they want to, keep them in their pocket, take them home and sharpen them and bring them back the next day.

Q. How large are the tools?

A. The scraper is made from a piece of barrel hoop and ordinarily they make them about a variation of from 4 to 6 inches long, and that sharpens, it is cut on an angle, sharpened on one edge so it will cut the scrap clay off, and

bent over. That is the scrapper, it is just a hand made tool of his own make and the block scraper is a steel scraper about an inch or so wide and approximately 8 or 10 inches long; they vary in lengths and the block, of course, is about the size of the clay as it is flattened out to put on the form and they just take the scraper and scrape over that to see that it is smooth.

Q. That is a wooden block, is it?

A. That is a plaster composition.

Q. When you spoke of it taking one to 3 minutes to get ready to go to work, did you include in that anything besides just fixing the scraper?

A. Well, I say 1 to 3 minutes; I never actually timed a fellow, how long it takes him to get started, but that was just a guess; it would be 1 to 3 minutes that he would include in all the operations, perhaps. He could spend more time at it. He could spend 10 or 12 minutes at it if he wanted to and you really couldn't find any objection to it, because you come along there, you see him scraping his block and he scrapes his block and it is either smooth or it isn't. If it is not smooth enough to suit him he can scrape some more. He could scrape quite a long time on a block. The same thing with a jigger man's scrapper, he may sharpen it up and get it all nice and sharp and ready to go to work and he finds when he starts to work it doesn't cut right, so he re-bends it or re-sharpens it, and they can really spend quite a little time working around or be pretty proficient at it and get it ready and go to work one to 3 minutes; it is pretty hard to set an actual time of 1 to 3 minutes, it would just be average, I would say.

The Master: Coming back in the afternoon after lunch, do they go through the same process as in the morning?

A. Well, this scraping blocks and sharpen scrapers, they do that all during the day. The block would need scraping before noon after starting time, at intervals during the period of time they worked, and the same thing

with the scrapper. If it gets dull they stop and sharpen it up again, and go to work. At noon time it may be, a direct answer to your question—it may be he would kind of string along with a dull tool and go until noon time and then sharpen it up again at noon.

The Master: As I understand it, then, in the morning they don't always start sharpening their tools; they only do that if they are dull at that time?

A. That is right. A lot of fellows—I have noticed jigger men would be right in the department at 6 o'clock, and I would think, well, he isn't going to get started at 6 o'clock, but he apparently had everything all ready to start right in and he didn't have very much sharpening to do and his batter out was ready, and his finisher was ready, and there wasn't very much time elapsed in some instances, but others they would be a different type of fellows and take a lot of time getting their things together.

The Master: Then going down to the end of the shift when they leave for the day, after they have finished their production work, what is there for the men in the department to do, men and women in the department to do, after finishing their production work and before they can leave for home?

A. Well, there isn't anything they are required to do after they quit work.

The Master: Don't they have to change uniforms?

A. Change their uniforms, and as far as sharpening tools and things like that, there wouldn't be anything like that to do.

The Master: Is the only thing they do change uniforms and then dash for home?

A. Well, I would say that would be the practice.

The Master: Do they take a whisk broom and clean up their shelves around them?

A. Well, there are times we ask them, tell them the job is getting kind of dirty where they are standing right by them, and they might be asked to brush a little of the dirt away, yes.

The Master: Is there anything else of that sort? Are those the only two things you can think of; changing uniforms and possibly brushing up around?

A. At the end of the day?

The Master: Yes, before they go home. Do they turn out any lights?

A. They turn out their lights.

The Master: They switch off—

A. They switch off their machine and turn off their dies, if it is at the end of the day.

The Master: Put anything away?

A. No, they don't have anything to put away, just their tools. They are using sponges—a finisher uses a sponge, and she takes time to tuck her sponge away so it isn't in the next operator's way the next morning, or on the afternoon shift.

The Master: All right, go ahead.

Q. (By Mr. Nunneley) These things you have been describing are simply matters of getting their personal tools and equipment ready to go ahead and work, is that right?

A. That is exactly right.

Q. During the day do any of them have to get any supplies, or anything of that sort?

A. Yes. They have a stock room or supply place in the plant, and finishers go there and get their sponges, and a jigger man—he will—some of the jigger men need sponges, too. They go there and get them. Any supplies that they have at all, why, they have to go to the stock room and they do that during the day. Quite often a job will be starting late, because one of the members are at the stock room getting some supplies.

Q. If the finisher goes over to get his sponge, would the other two in the group be working?

A. They can't work until she has obtained her sponge and got back to the job, because they can't run the machine without her being there.

Q. On these so-called automatic machines, can the people work unless the machine is running?

A. No. The machine has got to run before they can be able to work.

The Master: Who turns on the power on the automatic machines?

A. The switch that starts the machine, you mean?

The Master: Yes.

A. The operator starts that.

Q. (By Mr. Nunneley) Did you testify as to the operator being a salaried man, or is he on a production basis?

A. On the machine?

Q. Yes.

A. The operator himself is on the day rate.

Q. He works by the hour?

A. He works by the hour.

Q. Does he punch a clock?

A. He punches a clock.

Q. But he is an hourly rate employee?

A. That is right.

Q. And not a production employee?

A. That is right.

Q. What time do the machines start when the established starting time is 6 o'clock?

Mr. Lamb: Objection.

The Master: Overruled.

Mr. Lamb: Unless he establishes the day which he is referring to.

The Master: Overruled. I don't think you could expect him to testify as to any particular day.

A. The machine never starts except right on the hour. If the starting time is 6 o'clock and the machine is ready to go, the operator throws the switch that starts the machine, but we absolutely forbid him to start it before the hour, and the clock is right by his side, so we never need no excuse to start it before time. We absolutely insist on the machine starting on the hour or thereabout, and not before.

The Master: Is that true of this period from 1938 on, or is that some new rule you established?

A. No, that has been true right along since we have had the machines.

Q. (By Mr. Nunneley) You are referring to the automatic jiggering machines, is that right?

A. That is right.

The Master: When were those machines installed?

A. Those machines were installed—one machine was installed prior—I don't know the exact date, but prior to this wage and hour law, we had one of those machines going and I just can't recall about the second one, whether it was before that or not. I am not absolutely sure about the second machine before the Hour Law took effect in 1938, but I believe we had the machine going then.

The Master: You just have two of those machines?

A. We just have two now.

Mr. Nunneley: We will produce some proof as to when those were purchased.

Q. (By Mr. Nunneley) And if there is a sufficient crew there, those machines start at the proper time?

A. That is right.

Q. The established time, and not before?

A. That is right. We absolutely are there at the starting time to make sure it doesn't start before time. I always saw to that.

Q. Mr. Starner, something was said about a whistle. Do you know how many different shifts there are at the pottery? By that I mean different starting times for different classes of operations; do you know?

A. There are several different starting times for different departments, and that is what I was trying to just fix in my mind, it is back a ways, just how we blew those whistles for those different departments, but there was a little bit of confusion. When we would change a time for a different department, maybe the whistle would confuse, so we would drop the whistle for a while: year in and year out the consistency of the whistle wasn't the same, because the department may start at different times. Just how many departments there are that would have a dif-

ferent starting time, I wouldn't be able to give you the exact number, but there are several different starting times.

Q. In other words, the whole pottery doesn't start at 6 o'clock in the morning?

A. No, that is exactly right.

Q. Some start at 5:30?

A. That is right.

Q. Some 6, some 7, and some after 7, is that correct?

A. That is right, yes.

Q. When you speak of a whistle blowing, do you mean the one on the outside that makes a big noise, or the one on the inside?

A. That is the one I mean, the one on the outside.

Q. Now, Mr. Starner, referring to the time clock cards, do you know how the hours are figured from the punch in on the clock?

A. Yes, I know that if they punch in before—between 14 minutes to 6 and 6 o'clock, their time actually starts at 6 o'clock. And I don't only know that but I have made sure that all the people working there know that. • • •

Q. (By Mr. Nunneley) And when they leave the department, how is it figured?

A. When they leave the department at 10:30 their time stops at 10:30. And they can ring their card out within the quarter hour, in the 14 minutes time. They can't wait till 10:45 and ring their card. They must ring it out before that in order for the time to stop at 10:30.

Q. And does the same rule apply to the going in and coming out after lunch?

A. The same applies all the way through.

Q. Now, Mr. Starner, knowing the method of computation of time, would you say that the people in your department generally worked more time than is shown on the time clock cards, computed in that manner?

Mr. Lamb: Objection. That is entirely improper.

The Master: I think that calls for a conclusion. You have asked for the specific evidentiary facts upon which the Court or the attorneys can draw the conclusion. • • •

Mr. Nunneley: I will try to ask the same question.

Q. (By Mr. Nunneley) Knowing the method of computation which the company followed in dealing with the hours of the various employees, did employees in your department under your observation actually work more hours than were computed and credited to them by the company?

Mr. Lamb: Same objection.

The Master: Your objection is noted, the same objections that you made to the previous question.

A. Well, put that in detail, probably you would want that in detail.

The Master: Give the best answer you can, or if you can't answer, state you can't.

A. Well, the best I could answer that would be that the people did not work more than the time computed on their time cards, as methods which were specified here before, unless there was some way they could do it without our knowledge, and we are in the department at all times, unless there is some way they could do it without us knowing about it, and I don't see how they could. Therefore, I would say people do not work any more than the time shown on their card by that method of computation.

Mr. Lamb: I move the answer be stricken.

The Master: I will take that motion under advisement.

* * *

The Master: The question is, did any of the employees object to you as to the way the time was computed?

A. So far as the computing of the time, people didn't object to the method, except that they would like to stay longer, or something like that; if that would be an objection, they would actually like to work more time than would show on the card. So far as objecting to the time or method of showing their time, actual working time, they never really objected to that to my knowledge.

The Master: Did you ever have an objection from any employee made to you, that the employee thought the com-

pany was not computing his time correctly under the Wage and Hour Act and not paying them the time and a half that they thought they were entitled to?

A. No, I never did hear an objection to that at all.

* * *

Q. (By Mr. Nunneley) Mr. Starner, did you ever take employees' cards and punch them out for them while they were working?

A. I have been there a good many years and never did that in my life. Or never would allow any other foreman in connection with me to do the same. Absolutely against the rule. * * *

Q. (By Mr. Nunneley). Mr. Starner, in connection with this jiggering work, there are certain molds that are placed on the machine, is that it?

A. In connection with the jiggering work, yes. These molds or forms are in these conveyors, and they stay in the conveyor except they take it out and put the ware on them and put them back until the molds are worn out or need to be changed to some other form.

Q. Who did the mold changing?

A. The jiggerman and the batter-out always did the mold changing.

Q. Was that done during the time after they punched in?

A. That was all done within their working hours.

Q. Do you know of any of them punching out and then going back and changing their molds afterwards? Did you ever see or hear of that being done?

A. I never heard of it being done. I knew a lot of fellows that wanted to do it. I have been asked by several of them in the department at different times.

The Master: Will you name the individuals you have been asked by?

A. Well, I have been asked by John Metz.

The Master: Can you give the approximate time?

A. The time—

The Master: Give the time, place and conversation.

A. I couldn't give you the exact day.

The Master: Well, to the best of your recollection.

A. To the best of my recollection would be—well, frequently Metz and Walter Zelk and Earl Larimer, and I possibly could name some more, several of them asked if they could ring out and come back and change their molds on their own time, because then they could spend all their time producing ware, which would make more money for them, and I told them I could not give them that privilege and would not, and in persisting, I would tell them to go to Mr. Doll and ask him, but I knew he wouldn't let them, because he wouldn't be complying with the law. The only fellow that I knew that could possibly give them that privilege would be Mr. Roosevelt. And never gave anybody any satisfaction at all. Absolutely wouldn't consider them coming in after they had rang out and changing molds. I absolutely forbade it.

The Master: Did you ever know whether, in violation of your instructions, anybody did do that?

A. Not to my knowledge.

The Master: Do you know whether there was a time before the Wage and Hour Act went into effect when the molds were changed, before the employees had punched in on Monday mornings?

A. Before the law went into effect? Well, years ago there probably was times when an ambitious fellow would like to work longer than the departmental work.

The Master: Was there any time when there was a plant practice to that effect, that the employees would come in and change the molds and go out and punch their card?

A. There never was a time when they were required to change molds after punching their time clock. Never was a time.

The Master: Neither before or after the Wage and Hour Act?

A. Neither before or after the Wage and Hour Law; no.

Q. (By Mr. Nunneley) Now, Mr. Starner, you say these people have to acquire certain equipment, such as sponges, is that right?

A. That is right.

Q. What other equipment did they have to acquire?

A. Why, these sponges—you mean buy?

Q. Yes.

A. Well, as I said before, they buy these scrapers and—well, lately they haven't been buying many of those. One of them lasts quite a long time. Sponges they buy regular, daily, and they will also buy a pail. A jigger-man furnishes a water pail for the job and he buys those out of the stockroom.

The Master: Let's separate that into the three classes of workmen, the jiggerman, the batter-out, and finisher.

A. Yes.

The Master: The finishers buy sponges?

A. Of course, your Honor, the finishers buy their sponges—let's see—the finishers buy the sponges for the jiggermen. The jiggerman pays for the sponges, but the finisher buys them.

The Master: The finisher orders them?

A. Yes.

The Master: And then it comes out of the jiggerman's pay?

A. Yes.

The Master: Does the batter-out use sponges?

A. The batter-out only uses sponges where the finisher would find one he couldn't use, and he would take it.

The Master: Who pays for that?

A. The jiggerman would pay for that, too.

The Master: When the batter-out needs one, the jiggerman pays for it?

A. Yes.

The Master: As to the scrapers or scrappers, who pays for those?

A. The scrapers, the jiggerman paid for those, too.

The Master: And neither the batter-out nor the finisher needs to buy or pay for any scrapers?

A. No.

The Master: And the pails, you say the jiggerman—

A. (Interrupting) The jiggerman bought those, too.

The Master: Are there any other classes of equipment that either of those three buy?

Mr. Nunneley: I didn't hear that last question.

The Master: I am asking him whether there is any other classes of equipment that any of the three types of employees buy?

A. Yes, sometimes a finisher or batter-out or jiggerman may want a finger stall, they buy those; we also carry and supply them in the stockroom. They can get them any time during the day. Those are really the main supplies. I can't think of anything else that they would have to have on the job that they would be required to buy right offhand.

The Master: Do you know how often during the course of a year a particular jiggerman would need to buy a new scraper?

A. Well, by my own experience on those jobs, and observation, I would say a scraper would go a man years.

The Master: Considering the possibility of loss, theft, and everything?

A. Well, very few of them have ever been stolen.

The Master: Well, not as to what they ought to go, about how often, according to your best observation—what is your best estimate of how long they last the jiggerman?

A. That is the block scraper or the scrappers?

The Master: Take them both in succession, first the scrapers?

A. The scrapers would probably last one to three years, I just would guess.

The Master: In other words, if I started out as a jiggerman in a plant and had a scraper, I wouldn't expect to replace it on the average of from one to three years?

A. That is right.

The Master: And the scrapper?

A. He makes it himself out of rusty barrel hoop.

The Master: That doesn't cost him anything?

A. That doesn't cost him anything.

The Master: Forget that then. How about the sponges, how many sponges would be used up in the course of a year?

A. Well, a sponge will go from one to three days. It may last a day, it may not. They most always would last a day; you can't say a sponge would go two days. Sometimes they would have sponges that would last three days. We have had sponges in there, when we could get pretty good sponges, we have known of them to last a week.

The Master: And how much does a sponge cost, on the average?

A. On the average?

The Master: Yes; we had some evidence on that.

A. Well, we have different prices of sponges, and I would say the average price would be around 35 cents. That is the price they pay—is that what you want to know?

The Master: Yes.

A. 30 to 35 cents; we have some as low—we have sold a lot of sponges in there at around 16 cents.

The Master: Do you have different grades of sponges? And the jiggermen or finisher can take his or her choice?

A. That is right.

The Master: How much do the scrapers cost?

A. They never cost over a quarter.

The Master: How many scrapers will a particular jiggerman have at one time?

A. Well, he would never buy more than one at a time.

The Master: He never uses more than one or never has more than one?

A. He might have two; quite often they will have two scrapers, and it has been quite a long time, your Honor, since we actually had to buy the scrapers, because they don't wear out very fast.

The Master: Now, there was something else you said they had to buy?

Mr. Lamb: A pail?

A. A pail.

The Master: How often does a jiggerman have to buy a pail on the average?

A. A pail, he doesn't have to buy very often because they are galvanized pails and they don't have hard usage and if they spring a leak, or something, they are taken to the repair shop and are repaired.

The Master: Don't people walk off with them from time to time?

A. Sometimes one jiggerman might exchange his for another, or something like that, but that really doesn't happen very often.

The Master: How much do the pails cost?

A. The pails cost 25 cents.

Mr. Lamb: What was the answer as to how long they would last, around a year?

A. It would be pretty hard to determine the life of the pails; I would say they would last, oh, I don't know, it would be pretty hard to guess how long a pail would last, it would last at least a year, I would say.

The Master: This is the life to a jiggerman; how long before on the average he has to buy a new pail because either of the wearing out or theft or loss, or any other reason?

A. Well, I would say—

The Master: Not just the visible wearing qualities.

A. Oh, I don't think he would have to buy more than one a year.

The Master: All right, go ahead, Mr. Nunneley.

Q. (By Mr. Nunneley) You have been in the pottery how many years?

A. About 19 years.

Q. Has that been the custom all the time you have been there as to the jiggermen furnishing these various equipment, up until April, 1941?

Mr. Lamb: Objection, as to what the people did prior to October 24, 1938, is immaterial. We are filing this action seeking this redress for the period from October 24, 1938.

The Master: Well, I will take his answer. I will find out what the historical background is. It may not have much bearing, but it has some.

A. Those supplies that these jiggermen, batter-outs and finishers use are a common pottery supply sponges, known as potters sponges, and things they use, and I would say all my life I have known that they always have used the same method; a jiggerman has always furnished these himself, that is, he has paid for them.

Mr. Lamb: Just a second so I can get my request that the answer be stricken.

The Master: I will let it stand on the record, noting your motion.

Q. Do you recall, or did you have any experience with potteries back far enough at the time when the jiggerman also paid the people that worked with him?

A. Yes.

Mr. Lamb: Objection to that. "Back far enough" doesn't define the period involved, and our objection still continues as to the immateriality of the period before October 24, 1938. * * *

The Master: Well, let us get the answer. Read the question.

(Question read.)

A. It has always been the custom that the jiggermen furnish supplies for the job, used by the finisher and batter-out and himself.

Mr. Lamb: I ask that the answer be stricken.

The Master: I will take the motion under advisement until the close of the case.

Q. (By Mr. Nunneley) Did you ever instruct the people in your department that they had to come in at 14 minutes to 6:00?

A. No, sir, never did. The only thing that I told them was that they could ring in at 14 minutes to 6:00 if they

wanted to, but their time would not start until 6 o'clock. If they came in before that, that was entirely on their own, because we just gave them those few minutes time to ring in, because we were aware there was so many ringing in at the same time that it would take a few minutes for them to ring in. If they came in 14 minutes to, and then didn't start until 6 o'clock, and everyone understood it.

The Master: Did your whole department line up before the time clock at the same time?

A. Did they all line up?

The Master: Yes.

A. Quite often there would be several in line.

The Master: There has been testimony here that the men went in by departments, that one department would line up and punch the time clock and another department would come in and punch it.

A. No, I don't see how they could do that. They wasn't doing that. Our folks in our department wouldn't all come in like that. They would have to be there awful early in the morning in order to get lined up by departments. We forbid them to get in front of anybody that was already lined up at the clock.

The Master: Let's see now. In your department they were using clock B, the north clock?

A. Using the north clock.

The Master: And there were several other departments using that clock?

A. That is right.

The Master: You mean, then, anybody using that clock would just line up and punch the clock without regard to what department he worked in?

A. That is exactly right.

The Master: Or whether the others lining up with him were in the same department?

A. That is exactly right.

Q. (By Mr. Nunneley) Mr. Starner, do you know John Metz?

A. I do, sir.

Q. In your observation would you say John Metz ever worked more than the time shown on his time clock card, according to the company's method of computation?

Mr. Lamb: Objection.

The Master: I think I will sustain the objection to that. * * *

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Mr. Nunneley: Do you remember what the last question was, Mr. Reporter?

The Master: You asked him whether or not certain workman, John Metz, I believe, had ever worked over the time with which he was credited on the time clock cards by the company, and I thought it was a conclusion, or was asking for a conclusion. You would have to break it up.

Q. (By Mr. Nunneley) Now, Mr. Starner, I will show you some cards which have been marked Exhibit 31, and then 31-A, B, C, D, and so forth, to 31-AA, through 31-LL, which have been heretofore identified in this case as the time clock cards of John Metz, from November 7, 1939, to April 15, 1941, and I will particularly ask you to look now at Exhibit 31, being time clock card for the pay period from November 7, 1939, and will you examine the card with reference to the times when Mr. Metz appears by the card to have punched the clock in and out respectively (handing exhibits to witness); and, will you advise us during that period whether Mr. Metz actually worked any more hours than are shown by the computation on the card.

Mr. Lamb: Objection.

The Master: I will take the answer. • • •

A. My answer to that would be that John Metz has not worked any more than the hours computed on the card here.

Mr. Lamb: I ask that the answer be stricken.

The Master: I will let it stand as his testimony. • • •

Q. (By Mr. Nunneley) Yesterday the Master asked you some question as to how many hours the employees normally worked prior to the coming in of the Wage and Hour Act, and I believe you stated that preparation had been made to observe the law before it came into effect, or something of that sort?

A. That is right. • • •

Q. (By Mr. Nunneley) In other words, how many days a week, we will say, outside of the seven-day-a-week operations, were the rest of the folks operating for a year or so prior to the coming in of the law?

Mr. Lamb: Objection.

The Master: I will take it as part of the historical background. I won't let him go into any detail.

A. Well, prior to any effect of the law, we worked just nine-hour days. Never worked over that. That was our base.

Q. (By Mr. Nunneley) That was your base?

A. If we had enough work for them.

Q. If you had enough work for them. How many days a week?

A. Just 5 days a week.

Q. 5 days a week. So that the basic work week before the coming in of the law was 45 hours, if there was work enough?

A. That is right. • • •

Q. Now, Mr. Starner, showing you this Exhibit 31, it shows that on the first Monday that Mr. Metz punched in on the morning shift in that week, what time does it show that he went by the clock?

A. The clock time on the card here is 5:49.

Q. From your experience in the department, observation of the employees, including Mr. Metz, what would you say as to whether or not he started to work before six o'clock?

Mr. Lamb: Objection.

The Master: Overruled. I think the very same type of question was asked plaintiffs when they were on the stand, and they were answering on the basis of their general experience, because each one of them said they couldn't tell the time they started to work on any particular day except by general testimony as to what they normally would have done. • • •

A. In regards to the time this fellow started to work, I would say if he rang in at 5:49, it would take approximately four minutes to get to the job, which would make it 5:53. Then by the time he got his shirt off and got his tools ready and everything all started, ready to go to work, it wouldn't be very much before—if any, before 6 o'clock when the fellow actually got started.

Q. (By Mr. Nunneley) Would that—

A. (Interrupting) I would say that fellow wouldn't be starting very much before 6 o'clock when he didn't ring in until 5:49.

Q. Would that also be dependent upon the question of whether the rest of the crew was there or not?

A. If the rest of the crew had been there and was waiting for him, that would be the actual time he would get started, but if they weren't there, naturally he

couldn't start. He can't start the machine, can't start producing ware—or can't start production until the rest of the crew are there. So he actually might be the first one in of the group of three.

The Master: Let me get this clear. With the batter-out, jigger man and the finisher, is there any one of them that can do any work at all, production work, before the other two arrive?

A. The jigger man, he can't jigger a piece of ware until the batter-out has put the clay on the form.

The Master: If the batter-out gets there—

Mr. Nunneley (interposing): Perhaps we can explain the process.

A. If the batter-out would put the clay on the form before the jigger man is there, it would only take a few seconds until that clay on the form would be wasted, because it couldn't wait.

The Master: I see.

A. And the form is very absorbent, plaster-of-paris, and it draws the moisture out of the clay very readily, and the minute it is low in moisture content, it couldn't be jiggered, couldn't be polished up to smoothness.

So they always work hand in hand. If he puts the bats on the forms, they are handed to the jigger man and jiggered immediately.

The Master: If the batter-out arrives and the jigger man isn't there, the batter-out won't take a chance on the jigger man's coming in?

A. No, he would be foolish if he attempted to put bats out and wait for him, because even if the jigger man was standing right there and ready to go to work, or was in the department, and the batter-out was ready to go to work, he wouldn't put bats on right away, because he

would wait until the jigger man got his shirt off and his uniform changed and was there in the position and had his scrapper in his hand and gave a signal and would say, "I am ready for a form." He would be foolish to start out ahead of him. He would be wasting his energy.

The Master: Now let's see as to the finisher, just what does the finisher do?

A. The finisher, she can't work until the jigger man and batter-out have started the machine, because the machine is entirely enclosed and it is only open where she stands. As the machine starts, these forms come by her with the ware on, and she takes it off as it comes by and finishes it. If the machine does not start she can't do anything, she is just helpless, she just sits there.

The Master: I believe we have testimony on it before, but it has slipped my mind; what does the finisher do in finishing the ware?

A. She takes it off the forms and places it on what we call the whirler, and takes the finishing tin, or finishing steel, either one you may call it, and starts her whirler in motion by motor-driven, presses a switch and starts it in motion. She holds this tin on the edges, and as it is turning around the tin cuts off the rough part of the edge of the piece of ware and has a tendency to bring about the correct outline of the piece of ware which is not smooth, but it is smoother than it was before she put the tin on. The ragged edges are off. Then she takes the sponge, a wet sponge, and she sponges that edge until it is all nice and smooth, shows no jaggedness or rough or nicks, or anything like that, makes it all nice and smooth, and after she has her edges nice and smooth she inspects the faces and sponges them. Of this same ware she takes off probably 15 or 20 pieces at a time and finishes that

many, and as she has finished the edges then she sponges the faces of them with a sponge, while the motor is in motion, and unless her molds are new, and she doesn't have to sponge the faces, then she sets them over on a stand and on the stand she places what we call a setter; it is made out of a clay composition; and it has already been fired and it is hard and it holds the ware up so she sets it on there and inspects the faces and the entire piece of ware, and counts up so many, whatever is in the bundle, 15, 18 or 20 pieces, and then takes them from this stand and places them on a truck which is by her side, on a board, from 15 to 20 boards are on the truck—either 15 or 20.

Q. (By Mr. Nunneley) Now, to make that clear, what they call the slip house is where they mix up the clay?

A. That is right.

Q. The clay comes more or less in powdered form or dirt form?

A. The clay comes to the slip house as it would be right direct from the mines, and of course there is a lot of detail in that that has to be—there has to be several different kinds of clay put together.

Q. Then it is mixed there with water, is that correct, in the slip house?

A. That is right.

Q. And it goes into what is known as the presses, we have heard some talk about press-pulling, and so on?

A. Yes.

Q. When it comes out of the presses, what shape is it in?

A. When it comes out of the presses it is in what we call leaves, they are possibly that much (indicating) in diameter.

The Master: That is how much, 3 feet?

A. I wouldn't be able—probably 2 feet; I would just guess at that, I never measured one of them.

Q. (By Mr. Nunneley) It looks like a pancake?

A. 2½ feet wide, and it is round, and 2 inches thick.

Q. Looks like a big pancake?

A. Yes.

Q. Then what is done with that clay, how does that get to where the jigger man uses it?

A. Then after it is taken from those presses it is put in the—

Q. (Interposing) Is it still wet then?

A. Well, it is wet, but it is not in slip form by any means, it is wet, you can handle it.

Q. It is in liquid form—

A. (Interposing) When it is put in the presses it is in liquid form and when taken out of the presses it is in plastic form, however its plasticity is not uniform; in the center it may be pretty soft, and it is not uniform enough to form a piece of ware with, so they take it from there on a platform to what we call a pug mill, and they take these leaves and pug them into the pug mill, and this pug mill, the average would represent a good big sized sausage grinder; it is chopped up in fine pieces, and as it enters the top of the mill the mill is turning around and chops it up as it goes down through this large mill, and, why, there is a tremendous pressure put on it and that presses out all of the air blibs; the air pockets are pressed out of it, and the clay is turned up to such an extent so that it is all uniform and plastic, so you take a ball the size of your hand, it would be all the same so that you can form a piece of ware out of it and the ware would be uniform all the way through, and it has got to have the right moisture content in order

for it to be soft enough to be plastic and still stiff enough to hold together while you are handling it, and it is placed on these molds.

Q. Then what was done with it? What is the next step after that?

A. After it is put in this pug mill and pressed out it comes out into a roll. I don't know the exact diameter. Approximately about like that (indicating); maybe 8 or 10 inches in diameter. It comes out of this mill in a roll, and then what we call the pugger—

The Master (Interposing): What do you mean "roll"? A circular piece or straight roll?

A. Just a straight roll being forced right out of the mill. There is a nozzle about 8 or 10 inches in diameter, and this clay is pressed out of the nozzle and forms a roll about 8 or 10 inches in diameter. It keeps pushing out into a platform, and what we call a pugger takes the wire and cuts off its rolls in lengths approximately like that (indicating).

The Master: That would be about 2½ feet?

A. About 2½ feet, yes, about 60 pounds of clay it amounts to. He takes it off of this mill and places it on a wheeled cart or truck, just a hand-pushed cart, and he fills that cart up with, probably, 25 rolls of this clay, and then we have what we call a clay-hauler. He takes the clay out to these stations where these fellows are working and places it on their benches.

Q. (By Mr. Nunneley) When it gets to those benches, by that you mean that is where the jigger man—

A. (Interrupting) That is where the jigger man and batter-out are working.

Q. Then who handles it first? When it gets to the bench, what is done with it?

A. After it is put on the bench the next man that handles it is the batter-out.

Q. What does he do?

A. He takes a handful of this clay and places it on his block. We call it a block where he puts the clay and rolls it out, and gets it smooth on the block side, and then he has a die, electric-heated die, which could be referred to as a batting-out die, and this is suspended by a spring suspension above this block. It has hand hooks on it so that he can take a hold of it without burning himself, and he brings that down with a little force and flattens this clay out into pancake form.

Q. In other words, he makes a pancake of it?

A. He makes the pancake.

Q. Then what is done with that?

A. Then after he has the pancake made he tries to get them all a certain size and certain thickness, and then he picks it up, lets go of his bat, and picks up this pancake of clay, and picks it up to the air like this (indicating), and throws it onto the mould, and after he throws it on there the next operation is the jigger man. * * *

The Master: Go ahead.

A. Now, the jigger man takes it from the batter-out and puts it into what we call a jigger wheel. It is a wheel that is spinning all the time immediately before him. It runs simultaneously with the mangle itself.

He takes this form of mould, and it is designed to fit into this ring. So, he takes it and sets it in there, and while it is in motion there, naturally it spins around, so he puts his hand on there, wets his hand and puts it on there and holds it firmly, and places his hand more firmly, on the mould, and puts his jiggering tool down. It is on what we call a pull-down. It is not a hinge, but a bearing

so that it comes down to a certain point every time. It is pulled up with spring tension, and he pulls it down by himself so that it comes down easy and gets down to the clay, and he eases that in there until the tool gets down to as far as it is going, which comes within approximately, oh, one hundred thousandths of an inch of the piece of ware itself or the mould itself which comes down to that certain gauge.

He shoves off the scrap clay and presses a spray-gun which is suspended right there by the wheel, and water from the spray gun, and the centrifugal force, he polishes that clay up after he gets the surplus off. That would be what we call a jiggering operation. After he has got the surplus clay off of there, and the piece of ware polished, he raises his tool up and then picks the mould up and sets it into this mangle or conveyor, on the conveyor that is in the mangle, and it goes through there and the mangle is being steam heated. It helps to bring the clay form of ware free from this mould so that when it gets to the finisher she can pick it off.

The Master: Hardens it at the same time?

A. Just hardens it, yes.

Q. (By Mr. Nunneley) So that in speaking of the operation I think you said yesterday this fellow that hauls the clay to them, he comes earlier than the rest of them?

A. That is the fellow that comes in early, yes.

Q. He comes in early to have it there by the starting time?

A. Yes.

The Master: This process, in other words, has to be done more or less continuously. They can't haul the clay in at night and have a lot of it stacked up?

A. That is right. • • •

Q. (By Mr. Nunneley) I think we were talking about the card of Mr. Metz which showed he came in at 5:49, and did you testify that on that occasion he didn't start to work before 6 o'clock?

A. That is right, sir.

Q. On Exhibit 31, it appears that on the Monday shown thereon, as being in the morning shift, that Mr. Metz punched the time clock out at 10:31?

A. That is correct. • • •

Q. (By Mr. Nunneley) Would you say on that occasion that Mr. Metz worked until 10:30 in the department?

A. I would say that Mr. Metz couldn't hardly work until 10:30 because he couldn't work until 10:30 and ring out at 10:31. I don't think it is possible to get to the time clock in that length of time, if he didn't have a thing to do, but he has his hands all covered with clay and his arms; he has got a dirty apron on; he has to wash his hands; he first washes his hands there at the job when he quits jiggering, and his arms, with a sponge, and then he would take his apron off, put on a shirt—.

Mr. Lamb: Is this before or after he punched the time clock?

A. Before he punched the time clock, while he is still at his bench. By the time he gets his shirt on and then possibly stops at the toilet room where there is washing facilities in there, on his way to the time clock, I would say it would be impossible for him to work until 10:30.

• • •

The Master: Do you have any estimate, apart from the distance, as to how long it would normally take Mr. Metz or anyone else working in that department, at these mangles at the extreme west of the plant, to walk from the time clock to the manlges, by the usual gait at which they walk?

A. Well, from the time clock up to this section of mangles here in question, I would say in my estimated time consumed, it would be 6 or 7 minutes.

The Master: How long do you think it would take them to get back at noon from the mangles to the time clock?

• • •

A. Chances are he would walk a little faster, and by observation I would say he would walk faster. Sometimes they run, you have a hard time keeping them from running. Probably cut that down.

The Master: To about what?

A. Oh, you might at least cut a minute off there. He might make it in 6 minutes.

The Master: If this is 700 feet from the time clock to the mangles, and it takes them 6 or 7 minutes to get over, he is walking a little over 100 feet a minute, which according to my calculations would be at the rate of about 50 minutes to walk a mile. Do they walk that slowly?

A. Well, no, they probably don't. But I am basing my opinion on the observation of the time I have noticed it takes them to go from the time clock to here and from here back to the time clock by observation. Now, they don't always just beat it right out. As I said a moment ago, they stop here a lot of times. Most of the time they stop here and wash up before going out to the time clock.

The Master: Didn't you say yesterday—

A. I can't say they stopped there every time, but they do frequently stop there.

The Master: Didn't you say yesterday they went out on more or less of a run?

A. Yes, they do attempt to, but we don't allow them to do that.

The Master: They walk just as fast as they can without running?

A. They might actually go more hurriedly, but I don't say they run, because we don't permit it. If we catch anybody running, of course, we immediately stop them.

The Master: Would you think that it would take them—well, suppose it is 800 feet. Take the maximum distance that is given on the map there from the time clock A to these mangles. You say they might get out conceivably in 6 minutes. That would be at the rate of 133 feet per minute or about 40 minutes to walk a mile.

Mr. Nunneley: That includes what he did when he stopped, like washing up, and so on.

The Master: I was asking just the distance, or the time it would take to walk, once he is finished with his work, and cleaned up, put his tools away.

A. You mean from the time he is ready to leave here, until he gets to the clock?

The Master: Yes. Was your answer given with the idea of giving the complete time from the time he stopped production work until he got over to the clock?

A. Originally when I said—no, that wouldn't include all that.

The Master: Let us break that down and get this clear.

A. Let's see, now, I said the time it would take him—I couldn't tell you exactly how much time it would take the man, but you can see readily if his hands are full of clay up to his arms, and he sponges it off with a sponge, and takes off his apron and gets on his shirt and goes from there to the time clock, stopping on the way, that is really what was meant. It would take about 7 minutes.

The Master: In giving 6 minutes did you mean all that time, the time he cleaned up and the time he went to the toilet, if he went to the toilet?

A. Well, if he went in the toilet it would take more

time. I am just giving you what I would say would be the average time it takes these fellows from the time they quit work until they get to the time clock.

The Master: Can you give an estimate as to the length of time it takes them after they have quit work and cleaned up and are ready to walk along the route to the time clock to get from the mangles to the time clock at the gait they ordinarily walk at?

A. Well, your honor, I don't think you have taken into consideration the fact that this aisleway that these people travel on had a certain amount of congestion.

The Master: I am just asking you.

A. Probably you want to discredit the time I say it takes.

The Master: No. I want your estimate.

A. There are several things which cause a fellow to stop and pause a minute. A truck is in his way here, or maybe somebody is coming out here with a load of clay or a truck of ware. There are a lof of things that take up their time, and that is why we forbid them to run, because there are so many things that can get in the way, we insist on them not to exceed a moderate rate going through there.

The Master: Just give your best estimate of the time, regardless of what other people think about it. I was just pointing out and asking whether your estimate was correct, but I would like to get your estimate.

A. I would figure from the time clock up here the best time a fellow could posibly make in all reasonableness would be 5 minutes from the time he walks here down to there.

Mr. Lamb: Would you indicate what you meant by "here to there"?

The Master: You are now speaking, to get the record

clear, of the time it takes him to walk from these mangles at the extreme west to the time clock A when he is leaving at noon, or in the afternoon when he is through work; is that right?

A. That is right. If a fellow goes right along.

The Master: Now, how long would it take him to get from the time clock A, to the mangles, proceeding in the opposite direction when he comes in in the morning, or when he comes back after lunch?

A. To get from the time clock A to the mangles?

The Master: Yes, to the same mangles at the west end of the plant?

A. Well, you never see them walking very fast, so it would take him longer to get from time clock A to his bench in the morning.

The Master: What is your estimate as to that amount of time?

A. Well, a rough estimate there would be approximately 6 minutes.

The Master: Have you ever timed with a stop watch the actual time it takes?

A. No, I haven't taken from the time clock up here (indicating), I haven't done that.

The Master: Or with any kind of a watch?

A. No.

The Master: Have you ever walked the distance with the employees to see how long it takes them?

A. No; the only thing I am basing my opinion on is the observation from being in the department when the people come in, noticing the time they arrive at the department when they come in in the morning, and notice the time that they are consuming going out of there after the work hour.

Q. (By Mr. Nunneley): I guess you can be seated,

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Vol. III

TRANSCRIPT OF RECORD

(Pages 1037 to 1599)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 342

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ET AL., PETITIONERS,

vs.

MT. CLEMENS POTTERY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 30, 1945.

CERTIORARI GRANTED OCTOBER 15, 1945.

Supreme Court of the United States

OCTOBER TERM, 1945

No. 342

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL No. 1083, UNITED POTTERY WORKERS OF AMERICA, Affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

Petitioners,

vs.

MT. CLEMENS POTTERY COMPANY,

Respondent.

TRANSCRIPT OF RECORD

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

(VOL. III—Index and Pages 1057 to 1583, Inclusive)
(Proceedings in U. S. Circuit Court of Appeals, Sixth Circuit)

EDWARD LAMB,
LOWELL GOERLICH,
1014 Edison Bldg.,
Toledo, Ohio,
Attorneys for Petitioners.

FRANK E. COOPER,
BEAUMONT, SMITH & HARRIS,
Ford Building,
Detroit, Michigan,
BERT V. NUNNELEY,
Mt. Clemens, Mich.,
Attorneys for Respondent.

No. .....

United States of America

IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

MT. CLEMENS POTTERY COMPANY,

Appellant,

vs.

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL 1083, UNITED POTTERY WORKERS OF AMERICA, Affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

Appellees

Appeal From the District Court of the United States for the Eastern District of Michigan, Southern Division.
Civil Action No. 2582

TRANSCRIPT OF RECORD

(VOL. III—Index and Pages 1057 to 1583, Inclusive)

FRANK E. COOPER,
11th Floor, Ford Building,
Detroit 26, Michigan;

BERT V. NUNNELEY,
Mt. Clemens Savings Bank Building,
Mt. Clemens, Michigan;

BEAUMONT, SMITH & HARRIS,
Of Counsel,
Attorneys for Appellant.

EDWARD LAMB,
LOWELL GOERLICH,
1014 Edison Building,
Toledo, Ohio,
Attorneys for Appellees.

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Mr. Starner. Now, in giving your estimates of these times, they are given without having held a stop watch on these people to see how quickly they can walk from one place to another?

A. That is right; I wouldn't want to be—

Q. And they are also given with reference to the conditions under which these people have to travel the distance, being through the factory with whatever turns, obstructions and so on there might be in the way, is that right?

A. That is right, yes.

Q. And it is based very largely on the fact that from your observation you know what time they arrive in general in the department, where you have the job of getting them started at an established starting time, is that correct?

A. That is right, yes.

Q. Now, I ask you I believe, about this day; I showed that Mr. Metz, on Exhibit 31, the first Monday on which he was on the morning shift, which shows that he checked out at the clock at 10:31; I think at that time you were being asked whether he had quit work or stopped work before 10:30?

A. You ask me that question now?

Q. Yes.

A. I would say that he had to quit before 10:30, to ring out at 10:31.

Q. And on the same day, on Exhibit 31, it shows that again at noon, the lunch period, that he apparently punched the clock at 10:53; would you say that he started work before 11 o'clock or after 11 o'clock, or when? • • •

A. I don't see how he could get started there before 11 o'clock

Q. What is your best judgment as to that?

A. I would say it would be 11 o'clock or after, before he starts; ring in at 10:53, I would say 11 o'clock or after.

Q. And in each of those cases he couldn't start anyway, until the other two were there in his group?

A. That is right.

Q. And it shows that he rang out on that same Monday, referring to Exhibit 31, at 2:40. What would you say as to whether he worked after 2:30 or not?

A. Well, my—from observation I would say that this man didn't work after 2:30.

Q. As a matter of fact, what is the general practice in the department as to requiring them to stop at the stopping time?

A. We insist on them stopping at 2:30.

The Master: Just to get your testimony clear in each case, when you state he didn't start work until such and such a time, or he didn't stop—or he stopped work at such and such a time, and when you say you insist on them stopping at 2:30, you are referring in each case, stopping production work?

A. That is right.

The Master: Or starting production work?

A. Or starting production work. • • •

The Master: Exhibit 31 you have been testifying to, you stated Mr. Metz came in in the morning on the first Monday on the card at 5:49, and you stated he couldn't have gone to work much before 6:00.

A. That is right.

The Master: And you have also stated Metz, most of the time, was working on these mangles which have this particular operation. When you stated Metz could not have started work much before 6:00, did you have in mind he could not have started his operation as a jigger man before 6:00, or that he could not have started his turning on the heat much before 6:00? • • •

A. I think my testimony before would stand the same even without that operation.

Q. (By Mr. Nunneley) In other words, you mean by that, figuring it either way he couldn't have started before 6 o'clock?

A. That is it exactly. • • •

Q. So that when the employee went back and he started up his tool or machinery that was provided for him to make his ware with, is that correct?

A. That is right.

Q. And part of the starting up operation would be the turning on of the heat?

A. It could be termed as that. • • •

Q. (By Mr. Nunneley) Mr. Starner, were there times when the starting time was changed? In other words, was it always 6 o'clock, or was it varied from time to time?

A. It varied from time to time, sir. It wasn't always 6 o'clock.

Q. What would be the case in the afternoon, as to quitting time?

A. Changing time? They did often—I don't say quite often, but there is times when the starting time in the afternoon was changed, too.

Q. What about the quitting time?

A. The quitting time would be changed.

Q. In that event, your people would be notified ahead of time, would they?

A. That is right. They were always told about that.

Q. Referring to this Exhibit 31, it shows that Mr. Metz punched in at 10:53 on the first Monday that he was on the morning shift. What would you say as to whether or not he started work before 11 o'clock?

A. I don't see how Metz could start before 11 o'clock.

Q. And on the same day and the same Exhibit 31, it shows that he punched out again at 2:40. What time would you say that he ceased work? Was it before 2:30 or after 2:30, or at 2:30 or when?

A. I would say he didn't work any longer than 2:30.

Q. Now, Mr. Starner, in giving estimates of times,

and so on, that you have given here, what observation or means have you or did you have of finding out or knowing what the times were?

A. That is, in coming into the department?

Q. Yes, in coming in.

A. Well, from observation, the time the people come into the department, you could tell about when they rang in. In other words, it is several minutes after the time for the people to ring in that they actually arrive in the department, and I have noticed time cards at different times, looking at them, the time that they rang in and rang out, and judging by the time they arrived and left the department about how much time they consumed between the clock and their departments. That has been my observation. That is the way I am basing my calculations here.

Q. And you also at one time were an actual worker, doing these same operations, is that correct?

A. Yes, sir.

Q. Now, on Tuesday, when Mr. Metz was on the morning shift, it shows he punched in on Exhibit 31 at 5:51, is that correct?

A. That is right, sir.

Q. What is your testimony as to whether he started to work before 6 o'clock on that day?

A. From all observations, I would say that he wouldn't be started before 6 o'clock.

Q. And on the same day, as shown on Exhibit 31, he punched out at 10:30 at lunch time. What time would you say he stopped work on that day?

A. It would be impossible for him to work to 10:30 and ring out at 10:30. I would say he had to quit minutes before 10:30 to get to the time clock at 10:30.

Q. And on that same day, shown on Exhibit 31, Tuesday, on the morning shift, he rang in again after lunch at 10:54. Would you say he got started to work before 11 o'clock on that day?

A. I don't believe Metz could get started at 11 o'clock that day.

Q. From your observation would it be true that he must have started after 11?

A. I believe so.

Q. And on the same day, Tuesday, that he was on the morning shift, shown on Exhibit 31, it shows he rang out at 2:54. Would you say that he worked after 2:45 on that day? * * *

Q. (By Mr. Nunneley) Will you answer the question? Do you recall what the question was?

A. Yes. I don't see how somebody could constantly disobey the rules without our observation; I would say that the man quit at 2:45. * * *

The Master: I would like to ask this question; if Metz punched the time clock at 14 minutes to 6:00 on a given morning, would you say that he could have started work before six o'clock, production work?

A. Well, his starting to work at 6 o'clock would depend upon the other two people of the group; even if he was in there in time enough to start before 6 o'clock himself; so I don't see how he could have ever been timed to be in there at 14 minutes to. In fact, that doesn't happen. They don't do that.

The Master: I don't just see what value we are going to get out of going through all these time clock cards then, because even if he got in at the very earliest time the witness would still say, that is the very earliest time he could go by the time clock, he would still say he didn't start work before six. Your testimony yesterday, I believe, was that as a normal proposition nobody started work before 6 o'clock, when the shift was supposed to start at six, is that right?

A. That is right; I think I testified we would never quibble over a minute or two before 6 o'clock, because we never stood there with a clock in our hands.

The Master: They might start a minute or two before, but not before that?

A. It is possible, if everything synchronized so they could start, then we wouldn't object to it. The starting time was 6 o'clock. I can't say, and I don't think any-

body else can say nobody started before 6 o'clock, unless there was some kind of timing there to show whether they did or not. • • •

Q. (By Mr. Nunneley) Mr. Starner, it was, as I understood you to testify yesterday, it was instructions from the management at foremen's meetings, and was part of your job, to see that the time was kept down to the legal amount, whether 44, 42, or 40, or under. You testified to that yesterday?

A. That is absolutely right.

Q. Now, in your department were there any employees during the period the law was in effect who habitually and continuously worked more than the 40 hours, or 42 hours, or 44, as the case may be, when the law was in effect? • • •

A. The answer to that would be no, absolutely not.

The Master: And, again, by "work" you are defining work as production work, just to get the record clear?

A. That is right.

Mr. Lamb: May the record also show I request the answer of the witness be stricken.

The Master: Yes. I will deny it and let the testimony stand.

Q. (By Mr. Nunneley) Mr. Starner, in cases where people might have occasionally worked over the 40 hours, or 42, or 44, as the case may be, would that show in the records?

A. It certainly would.

Q. Mr. Starner, in this Exhibit 31 I notice there is a time when Mr. Metz punched out at 2:18. What would that indicate? (Handing exhibit to witness.)

A. His time in that case, of course, as computed by the card, would stop at 2:15, but he would actually have quit before that time to be able to ring out at 2:18. Does that answer your question?

Q. Would that mean that he quit, also, at some time before the 2:30?

A. Before the given time to stop.

The Master: Why would he quit at 2:18 if the shift ended at 2:30?

A. Well, there is times when various reasons would come up that a fellow would want to quit in a hurry and he would do that, wanting to go somewhere, he had to be some place at a certain time, and he wanted to stop early that day. There was various reasons why a fellow wanted to quit at 2:15. If the department didn't quit we would give a fellow permission to stop. • • •

Q. You used the expression "changing uniforms." Nobody wears a uniform there, do they, in the ordinary sense of the word?

A. No, not the entire uniform. I really meant their aprons and things like that. I was really referring to the aprons. • • •

Q. (By Mr. Nunneley) Mr. Starner, did you ever see Mr. Lamb before you came into court here yesterday?

A. Never did, sir.

Q. Did you ever have him pointed out or recognize him in any way?

A. Never have, sir.

Q. Did you ever start a suit against the Mt. Clemens Pottery Company, and garnishee the S. S. Kresge Company in Toledo?

A. Absolutely not.

Q. Did you ever authorize anybody to start such a suit for you?

A. No, sir.

Q. If such a suit was started, was it done entirely without your permission or authority, Mr. Starner?

A. Yes, sir, entirely without it.

Q. When did you first learn that there was such a suit?

A. When I first learned that, when I was told by Mr. Doll.

Q. Do you recall somewhere when that was?

A. The exact time, I don't believe I could give you. It has been some time ago.

Mr. Nunneley: Take the witness.

Cross Examination

By Mr. Lamb:

Q. Do I understand that if you are one of the named plaintiffs in an action in a proceeding for those named plaintiffs, instituted in a court down in Toledo, that the authorization and power of attorney and other records signed by the employees in these matters, none of such records would bear your signature, is that correct?

A. I haven't signed no papers or given anyone authority to bring about any suit.

Q. And if there is a signature on an authorization and power of attorney purporting to be your signature, that would not have been applied by yourself, is that correct?

A. That is correct.

Q. Now, I understand, you have been a foreman of the Mt. Clemens Pottery Company clay shop for some 18 years, is that correct?

A. That is right.

Q. During those years, you have had foremen's meetings, usually addressed by Mr. Doll?

A. Yes.

Q. These meetings were held on Tuesday of each week?

A. For quite some time we have had those.

Q. As I understand it, during these years you have usually arrived at the plant and in your shop around 5:30 in the morning, is that correct?

A. I arrived at around 5:30 in the morning if the starting time was 6 o'clock.

Q. I see. Did you determine the evening before from some source as to what the starting time would be for the next day?

A. We always knew ahead of time when the starting time would be.

Q. Did you get that information, Mr. Starner, or did you make that decision? Did you get the information

from someone else or did you make the decision as to what time the employees should come in the next day?

A. Well, it wasn't always just my own decision.

Q. But did you participate in it?

A. Yes, sir.

Q. And then you conveyed that information to the employees, is that correct, the day before, so they would know?

A. That is right.

Q. Is this man, Mr. Fitten, Robert Fitten, an assistant of yours, that is, an assistant foreman in the same shop of which you are foreman?

A. That is right.

Q. That is the Mt. Fitten who testified here yesterday?

A. That is right.

Q. I thought you said yesterday that the dies, and so forth, were turned on or heated by you shortly after you arrived at work at 5:30, for instance, so that the same would be warm and ready for the people when they came to work; is that your testimony?

A. I said they were turned on ahead of time, yes.

Q. Do you oversee that work?

A. I check up to see if it is being done.

Q. Now, if an employee worked until, or, his time clock card shows that he worked until 2:29, that is starting at 6, he worked until 2:29, are you familiar with the time that the company would have paid him to?

Mr. Cooper: An objection to the hypothetical question.

* * *

The Master: What you want to know is, in other words, if the time clock cards show the employee checked out at 2:29 how much time was he credited with.

Mr. Lamb: Okay, I will ask that.

Mr. Nunneley: All right.

The Master: They apparently have no objection to that form, and that seems to get what you want.

So, will you answer that question; if an employee checks out at 2:29, how much time is he credited with?

• • •

A. The time would be computed to 2:15, if he rang out at 2:29.

Q. (By Mr. Lamb) That is right. And if he rang in at 5:46, from what time would the company compute his time?

A. His hours, you mean?

Q. Yes.

A. 6 o'clock.

Q. That is, if he had checked in at 5:46, they would compute his time from 6 o'clock, is that your testimony?

A. That is right.

Q. Now, I am not too certain on your direct examination that you said that the pails, scrapers and sponges were all charged to the jigger man, or that some of those articles may have been charged to finishers. What is your testimony about that?

A. The jigger man pays for those supplies.

Q. And I think you said that that had been the practice until recently?

A. That has always been the practice, that these charges be to the jigger men until during this period of time.

Mr. Nunneley: The period of time involved in the suit?

A. The period of time involved?

Q. Has the practice continued since the filing of the suit?

A. Do I have to answer that?

The Master: Yes, answer it. There has been no objection.

Mr. Cooper: If the witness knows.

The Master: If you know. Of course, obviously, if you don't know, you can't testify.

A. Why, not altogether. I should say that it is the same.

The Master: I beg your pardon?

A. The charges are not made exactly the same as they were before.

The Master: How are they made now, if you know?

A. Well, if you mean each individual's supply?

Mr. Nunneley: What difference does it make, since the suit started, if they made a change in the method of charging?

The Master: I will find out out of curiosity, if nothing else, what they do now. It may have some slight bearing.

A. You mean in regards to all these supplies, or certain supplies?

The Master: In regards to the supplies you mentioned, the pails, sponges, scrappers and scrapers? No. The scrappers you don't have to worry about.

A. No charge on scrappers.

The Master: The scrapers, pails, and sponges.

A. The scrapers and pails would be the jigger man's property. The sponges are at the present time—that is what you mean—by the finishers.

Q. (By Mr. Lamb) Paid by the finisher?

A. That is right.

Q. And not by the jigger man?

A. That is right.

Q. Now, you said that the sponge is charged to the employee on an average of about 35 cents apiece. Do you have any notion of how much that sponge costs the company?

Mr. Cooper: Object on the question of materiality, your Honor.

Mr. Lamb: It is highly material.

The Master: Well, it is raised in the pleadings, and I will let you argue that in the briefs. I will take the testimony without ruling on the effect to be given to it.

A. Did I say that all the sponges cost 35 cents?

Mr. Lamb: No. You said that they averaged 35 cents.

The Master: You, at least, put some average on it.

Mr. Lamb: Some as low as 16 cents?

A. That is right. I didn't say they were paying over 35 cents, though, did I?

Q. (By Mr. Lamb) No. I don't want to mis-state your direct testimony. I simply want—calling your attention to sponges that are charged to the employees at the rate of 35 cents, let us put it that way—

A. Yes.

Q. —Do you have any notion of what that sponge costs the company?

A. I am pretty much impressed by the people who come there with the sponges, that the sponges are costing the pottery most all the time more than actually what they are charging, and it might be when sponges were easier to get in times past, and some time back, that they might have been issuing them out at the same price, but I am sure most of the time, if there is any difference, the people are getting them for less.

Mr. Lamb: I want to get not your impression, but—

Mr. Nunneley: You asked him.

Mr. Lamb: I am asking you whether you have any knowledge of the amount that the sponge, which is sold to the employee, or charged the employee for 35 cents, how much that sponge costs the company?

The Master: Do you know how much that sponge costs?

A. I would say I wouldn't know about that.

Q. (By Mr. Lamb) I see. You don't have knowledge that that sponge costs less than 20 cents to the company?

A. Not that I can verify.

Q. I see. Did you hear Mr. Doll testify about the policy of mark-up on products sold and charged to the employees?

A. I did not.

Q. Calling your attention to cards which have been produced for Delbert Phillips, was Delbert Phillips an employee in the clay shop?

A. That is right. • • •

The Master: It will be Exhibit 74, with a letter that will be given to it later.

Q. (By Mr. Lamb) I note on that Thursday, the first Thursday marked on that card, that Delbert Phillips reported in at 6:48, out at 12 o'clock, reported in at noon at 12:22 and out at night at 4:39. Will you tell us your computation under the company's instructions, and method of computation of the amount of time that Delbert Phillips worked on that day? Would you like a paper and pencil? * * *

A. I would say 9 hours.

Q. All right. Now, on the following day, which is Friday, on the time card for the period ending August 27, 1940, Mr. Phillips checked in in the morning at 6:53, out at 11:34, in at noon at 12:36 and out at night at 4:22. Will you, under the company's method of computation, advise us the time worked by Mr. Phillips? * * *

A. According to that it would be 8 hours. * * *

Q. And on the following day, Saturday, the employee checked in at 6:15 and out at 10:55, is that correct?

A. That is right.

Q. And the computation that you make for the time he worked on that day?

A. It would be 4½ hours.

Q. From 6:15 to 10:55 is 4½ hours, the way you compute his time, is that correct?

A. Yes, sir.

Q. And that is what the company has computed his time for, is that correct? * * *

A. Yes, sir. * * *

Q. That is right. Now, let's go down one more and skip Monday and take Tuesday. Mr. Delbert Phillips reported in at 7:47, is that correct?

A. That is correct.

Q. And out at 10:12, is that correct?

A. That is right.

Q. And you have given him credit for how much time worked?

A. We have given him credit for 2 hours, as I can see there.

Q. There are a great many written notations around that card. Are you able to advise us what those indicate?

A. No, I don't believe I could, sir.

Q. I was asking you whether you knew, if you can, tell us that you saw Mr. Delbert Phillips on that Saturday morning, which is indicated by Exhibit 74-U?

A. You asked me if I saw him?

Q. Yes.

A. I couldn't say whether I did or didn't.

Q. Now, you have testified about some employees getting to work and punching the time clock and sometimes talking about hunting or gossiping some place along that line. Did you mean to imply that you saw Delbert Phillips do any of those things on that Saturday morning?

A. May I explain there? I say I didn't see Delbert Phillips on this particular Saturday morning, because the card indicates that he worked some other kind of work the day before, which might have told him then to report at the same job the next day. I am not sure. • • •

Q. Now, you said something about employees having strolled to their work from the time clock to their bench. Did you see Delbert Phillips strolling that day or did you see him running, or just what was he doing on that day? How was he conducting himself between the time clock and his work?

A. On what day, sir?

Q. On the Saturday indicated by Exhibit 74-U?

The Master: He says he was in some other department that day. Perhaps you could pick out some day on which he was in this department.

Q. (By Mr. Lamb) There isn't any question that he was in your department on the period ending September 10, 1940, on Wednesday, the first Wednesday marked on that card, is there?

A. That is right.

Q. Being Exhibit 74-W?

A. That is right.

Q. Tell me how he conducted himself between the time

clock and his working activities that day. Did he run or did he stroll? Going in, I mean.

A. I don't think I could tell you that, your Honor, because I wouldn't remember what particular day, as to whether he did that particular day or not.

Q. And would you have any knowledge of the time worked except by looking at the time cards?

Mr. Cooper: Objection, if your Honor please, to the form of the question, which assumes that a look at the time cards would indicate the hours worked.

Mr. Lamb: This is cross examination, and I am asking him if he would have any knowledge of the time worked without looking—

The Master: I think it is proper. I will take the answer. • • •

A. Except from the time clock card, I don't see how I could, because I couldn't remember unless I go back and checked the amount of ware that he produced that particular day, and had that to verify the fact he worked on that day, but I haven't got those records here in my hand.

Q. (By Mr. Lamb) That is right. Now, supposing—can you tell us how much time he worked on any day, except by looking at the time clock cards?

A. From this standpoint here? From here?

The Master: Yes, right now. Can you tell right on the stand if any particular day were picked, could you tell how much time he worked without looking at the time clock cards?

A. Not from here I couldn't, no.

Q. (By Mr. Lamb) Well, even if you had some production records they wouldn't indicate the hours he worked, would they? In other words, some days he might produce more if the material were there?

A. That is right.

Q. And the position, and so forth, and other days he would produce less in the same amount of time?

A. That is right.

Q. So, I understand it, it would be your testimony that only by looking at the time clock cards can you tell how much time any employee in your department worked, is that correct?

A. After the day has gone by sometimes—now, you are referring back there for quite some time.

Q. That is right, I am referring to the period—

A. At this late date that would be the only way I can recall, because I couldn't remember.

• • •

Q. That is the purpose of keeping time cards, isn't it?

• • •

A. I wouldn't know, to be sure, if that is what the company keeps time cards for.

Q. (By Mr. Lamb) As I understand it, your testimony on the practices of the employees applies to those employees in the clay shop department only?

A. That is right, sir.

Q. That is correct, is it not?

A. That is right.

Q. And do you have anything to do with making computation of the time worked by the employees in the clay shop?

A. So far as the cards are concerned?

Q. Yes.

A. I have nothing to do with that.

Q. That is done by some person in the office, I suppose?

A. That is right. • • •

(Time cards of Wells Clay were thereupon marked, respectively, Exhibits 75, 75-A to 75-Z, and 75-AA to 75-LL, inclusive.) • • •

Q. (By Mr. Lamb) Now, I assume that what you said in reference to Delbert Phillips is equally true as to the employee Wells Clay, particularly with reference to not being able to advise the particular approach of any employee on any particular day between the time clock and the place of his bench, is that correct? • • •

The Master: That is, you don't know on any particu-

lar day, any given day, how a particular employee approached from the time clock, from punching in the time clock, to the place where he started his production work, for this period from 1938 to 1941?

A. Except as by indicating on the time card, I should think it would be the same on both cards.

The Master: Well, you don't know whether Wells Clay, or any other employee in the department, on any given day during this period stopped at any point to talk with any other work man, or just what they said on any given morning, or how fast they walked from punching the time clock to the place where they started their production work in your department, do you?

A. As right to the exact time, within the minute; I possibly couldn't tell, no.

Q. (By Mr. Lamb) Well, within five minutes, how can you tell?

A. Well, I am there in the department, I can tell what is the practice.

Q. I am asking you whether you can tell us on any particular day as to any particular employee, how quickly or slowly the employee went between the time clock and the bench?

A. Well, if he rings in at 7 minutes before the time to start, I could say I know he couldn't get started at work before the hour.

Q. Well, I am asking you whether, irrespective of time clock cards, or anything else, can you tell us how rapidly an employee, a particular employee, went to or from the time clock to his bench on any particular day?

A. As to how fast he went from the time clock to his department, I couldn't tell on any particular day, no.

Q. Or for any particular employee?

A. Any particular employee; he might have run; I didn't see him, or something like that, if that is what you mean.

The Master: If you did see him, you have undoubtedly forgotten by now how he acted on one particular day?

A. Yes, that is about it.

Q. (By Mr. Lamb): Taking the cards of Wells Clay, Exhibit 75-I, he checks his time clock card in usually at 5:51, does he not? • • •

A. There is three out of five he checks in at 5:51.

Q. (By Mr. Lamb) Yes, and that is true between 5:51 and we will say 5:55 on his other cards, is it not, 75-J, Exhibit 75-K, Exhibit 75-L.

The Master: Do you want to know whether on all of these cards in the morning he checks in between 5:51 and 5:55 when he comes in in the morning, rather than the afternoon shift?

Mr. Lamb: That is right.

The Master: Go through the cards.

A. (Referring to cards) You say from 5:51, here is one he checks in—

The Master: 5:51 to 5:55.

A. That is right, on that card. That is not true there (indicating).

The Master: On Exhibit 75-K he checked in one day at 6:08.

A. That is right.

Q. (By Mr. Lamb) And the other days—

The Master: The other days he checked in within the time limits indicated.

Q. (By Mr. Lamb) 75-L.

A. Between 5:51 and 5:55—5:52.

Q. 5:52.

A. Yes.

The Master: You asked 5:51 to 5:55, he can give the blanket answer for all of them on that basis.

A. That is true also for 75-M.

The Master: It is also true of 75-N.

A. That is right.

Q. (By Mr. Lamb) Then on Exhibit 75-O appear the first two days, that is Monday and Tuesday, he appears at 6:18, does he not?

A. That is right.

Q. And on Exhibit 75-V, on Monday, Tuesday, Wednesday and Thursday, at 6:18, from 6:18 to 6:21, is that correct?

A. For those four days.

Q. Yes.

A. For those four days, that is right.

Q. And all of the days on Exhibit 75-Q he appears at 6:18, does he not.

The Master: No, 6:18—

Mr. Lamb: From 6:18 to 6:22.

A. That is right.

Q. Did you advise him before those days, which we have had reference to to appear at 6:18 rather than 5:50? Did you tell him of a different starting time, that he should have a different starting time?

A. Starting regularly, that would indicate that he had been told.

Q. By you?

A. By me.

Q. What?

A. That is the starting time would be—

Q. As indicated by the time cards?

A. Yes, as indicated by the time clock cards.

Q. What about—

Mr. Nunneley (Interposing) What do you mean, "The starting time as indicated by the cards"? What starting time is indicated by the cards?

Mr. Lamb: I am referring to Exhibit 75 and the letters which we have used in the questions.

Q. (By Mr. Lamb) You understand which time clock cards I was referring to, Exhibit 75, Clay Wells?

Mr. Nunneley: Which one is that?

Q. (Continuing) And the time of 6:15 and 5:50—

The Master: I think it is clear on the record, and some of those you indicated on the record and gave the number and letter, he started coming at around 6:18 to 6:20, 6:22; you say he was told before that, that the starting time was changed?

A. The starting time was changed. It wasn't starting at 6 o'clock at this particular time, no.

The Master: What was he told?

A. As would indicate there, probably would be proved by other cards in the same department in the same period.

Q. (By Mr. Lamb) Other employees in the department?

A. Probably would be indicated by them.

Q. I don't think I asked you, Mr. Starner, to advise us or explain to us what you meant by these employees changing any garments after they left the time clock and began the physical operation of their job. Did you mean to say that they took off their coats and hats and hung them up some place?

A. I did not mention coats and hats.

Q. Coats and hats and so forth were put in the cloak room before they punched the time clock, isn't that correct?

A. Yes, sir.

Q. Do your activities only cover the clay shop, or are there any other departments that you have any active management of?

A. Clay shop only. • • •

Q. Do you know of any employees working over the statutory period of 40 hours?

A. Have they ever worked over the statutory period?

Q. Yes.

A. Yes.

Q. On the company's computation?

A. They have worked over 40 hours, I believe.

Q. And over 42 hours when that was the statutory period?

A. There have been cases where they have.

Q. Do you know of any particular employees who worked more than the statutory period in any particular week without referring to the time clock cards?

A. I can't say that I do.

Mr. Lamb: I think that is all. • • •

Re-Direct Examination

By Mr. Nunneley:

Q. Mr. Starner, you said that you couldn't tell from memory without any reference to any records or anything how long any person worked on any given day, is that correct?

A. That is right.

Q. By referring to these cards can you tell whether the party worked before, or at, or after, the established starting time and stopping times, and so on, from your experience?

A. I can, sir.

Q. That is based on what?

A. My experience and knowledge of the keeping of the time on the cards.

Q. I will show you Exhibit 75-O, being the time clock card for Wells, Clay, for the pay ending June 4, 1940, and call your attention to the fact that on the Monday and Tuesday of the morning shift that is on the card it shows that that man checked in at 6:18 (handing exhibit to witness)?

A. Yes, sir.

Q. What would you say was the starting time for him that morning or those two mornings? • • •

A. I think I can say that his starting time there at that particular time he rang in would be 6:30.

Q. And, I will show you Exhibit 75-P, being the time clock card of Wells Clay for the period ending June 18th, 1940. I call your attention to the fact that it indicates that on Monday of the morning shift week he checked in at 6:18, and Tuesday at 6:21, and Wednesday at 6:19, Thursday at 6:18. What would you say was his starting time for those days? (Handing exhibit to witness).

A. The starting time were those days mentioned would be 6:30.

Q. And when you stated that you could tell from the

time clock card what the starting time was, is that what you meant, that you could interpret that as the starting time in that way?

A. Could interpret that; that is exactly right.

Mr. Nunneley: That is all.

Re-Cross Examination

By Mr. Lamb:

Q. As I understand it, you say that the starting time on Exhibit 74-R, the stopping time on Tuesday which appears as 7 o'clock, what time would you say that he actually stopped production work on that day, on that particular day?

A. You mean here?

Q. Delbert Phillips, Exhibit 74-R, on the first Tuesday it appears there that he reports in at 2:41 and stops at 7 o'clock. What time would you say that he actually stopped production work on the line that he was doing, actual physical stoppage of his job?

A. It would be seven minutes before 7 o'clock because he couldn't possibly ring out before the same time he would stop production.

Q. How many minutes before? You got the exhibit right in front of you now. Tell us when he stopped the physical job that—physical work on the job he was performing.

A. It could have been seven minutes; it could have been ten minutes.

Q. And do you know when the company computed his time as the time he stopped?

A. 7 o'clock.

Q. 7?

A. That is right.

Q. Do you want to compute that time and tell us how many hours he worked on that day? I will read into the record the fact he reported in at 2:31, out at 7, back from lunch at 7:23, and out at 10:11. The company computed

it from 7 o'clock, and you compute the time that the company gave him credit for?

A. 6¾ hours as per on the card.

Q. The company has given him credit for 6¾ hours on that day?

A. That is right.

Q. Now, what time did he report in on the physical job that was assigned to him on that morning if he reported in at 2:31? What time did he get on the physical act of performing the production work?

A. 2:45.

Q. 2:45. You mean that it took him 14 minutes that day to go from the time clock to the physical job to which he was assigned?

A. You said time completed, time he actually started production on that day, didn't you?

Q. Yes.

A. Did I misunderstand you?

Q. I am asking you what time he went to the physical job of production when he reported in on that morning at 2:31?

A. You mean what time he arrived at the job?

Q. Yes.

A. At the bench?

Q. Yes.

A. Well, he could have arrived there at 2:36, 2:37.

Q You say that he worked on that particular day before 2:45 on production?

A. I would say he didn't.

Q. You will say he didn't. Will you tell us what he did in that 14 minutes that qualifies you to say he didn't start work immediately after arrival at the job, tell us what he did that qualifies yourself to say he didn't do the work?

A. Well, before he can go to work on that particular job he has first got to get ready to go to work.

Q. To-wit? What did he do between 2:31 that day on Tuesday for the period ending July 13, 1940, being Exhibit 74-R, tell us what he did on that day?

A. I can't tell exactly all that he did, but I know—

Q. (Interposing) Can you tell us he did anything?

A. He would have to do—

Q. (Interposing) Tell us what he did between what you say is 2:36 and 2:45, tell us what he did that day.

A. Well, he—

Q. (Interposing) Not what he may have done, you have said he didn't go to work that day, I am asking you what he did.

A. He would have to take off his shirt and put on his apron.

Q. Did you see him take off his shirt and put on his apron that day?

A. Well, I never seen him work without an apron.

Q. Did you see him put on a shirt that day—

The Master: Take off a shirt you mean?

Q. (By Mr. Lamb) Or take off a shirt, whatever you are ascribing to it, did you see him do that? What color shirt did he have on?

The Master: Let him answer this first.

A. I couldn't say I seen him take off a shirt, but it is the practice to take off his shirt.

Q. I am asking you a specific question now, Mr. Starner, what he did between 2:31 and 2:45 that day; he didn't go to work until 2:45, what was he doing after he punched that time clock card and you say it took him possibly up to 2:36 to get to his bench on the job; what did he do between 2:36 and 2:45 that day?

A. He wouldn't work without an apron, he would have to put the apron on, wouldn't he?

Q. What did he do that day?

A. Before he starts to work, is that?

Q. That is right, before you gave him credit for starting work?

A. Puts on his apron, takes off his shirt, gets his tools ready to go to work, the scrappers, has to turn—

Q. (Interposing) You saw him do all that?

The Master: Just a minute, let him answer the question first.

A. He has to turn on his mangle and get his heat, and then he has to make sure he has a crew to work with before he can go to work.

Q. (By Mr. Lamb) All of that took exactly 14 minutes, is that correct that day?

A. I couldn't say—

Q. (Interposing) Between 2:31 and 2:45, it took exactly 14 minutes, is that correct?

Mr. Nunneley: Let the witness answer.

The Master: Let him answer.

A. I couldn't say it took him exactly 14 minutes.

Q. Aren't you saying he started to work at 2:45, isn't that your testimony?

Mr. Cooper: He said "not before."

A. I said "not before 2:45."

Q. (By Mr. Lamb) O. K., so it took him 14 minutes that day to go from the time clock card, go through all these operations that you say of putting on a shirt and taking off a shirt, or walking from the time clock over to his bench, that took him 14 minutes, is that correct?

The Master: In the operations he has enumerated, in other words?

Mr. Lamb: Yes, is that correct?

A. Well, you are pinning me down right to the minute. I have stated before that he could have started half a minute before, and I wouldn't question that.

Q. (By Mr. Lamb) Oh, half a minute.

A. He could have.

Q. These operations took between 13½ minutes and 14 minutes, is that correct?

A. Well, this operation would take—by my own experience, if I bring in—

Q. (Interposing) I am asking you now this particular day.

A. I will tell you exactly how they do that, ring in, say—

Q. (By Mr. Lamb) This day?

A. All right.

Q. We are talking about Tuesday, the first Tuesday listed on the card of 74-R?

The Master: It is obvious he doesn't recollect exactly what happened on that day.

Mr. Lamb: If he will say he doesn't recollect, O. K.

Mr. Nunneley: The witness has repeatedly said he couldn't tell you what happened that day.

The Master: He says he can only tell from his general experience what he did.

Q. (By Mr. Lamb) Didn't you say he started work at 2:45 that day?

A. I said that.

Q. I thought you did. Now, the day before he started work, or he punched the time clock at 2:35, and what time did the company give him credit for working, reporting in to work that morning, 2:45 again?

A. 2:45.

Q. Now, do you know anything that he didn't do on the day that he was credited with working at 2:45 on Monday that he did on Tuesday that took him the extra 4 minutes?

The Master: You mean based on actual recollection?

Mr. Lamb: Of course.

The Master: Or based upon inference from his experience?

Mr. Lamb: Or based on the cards.

A. I am interpreting the card by my own observation. I can't say I seen him do anything that particular morning.

Q. Can you tell me whether there was anything distinguished the Monday from the Tuesday when he reported in at 2:35 on Monday and 2:31 on Tuesday, that you should have given him a starting time as of the following quarter hour each day? Was there any physical act that he didn't do one day that he did on the other?

The Master: I think you will have to state whether you mean based on actual recollection or whether you mean based upon observation and general experience?

Mr. Lamb: Let him answer it any way he can.

The Master: O. K., then.

Mr. Lamb: What this particular employee did is what the question is, and not what he may have done in his experience twenty years ago.

The Master: In other words, what you want to know is if he has any actual, definite recollection what that employee did on the afternoon he started to work or punched in at 2:31, that he didn't do when he punched in at 2:35, and not based upon an inference from experience. Do you have any definite recollection, sitting on the stand there, what he did or didn't do that day?

A. I have no recollection of that, no.

Q. (By Mr. Lamb) Can I ask you, Mr. Starner, whether you are able to advise us that, irrespective of which end of your department an employee is in or irrespective of the bench to which he might be assigned or its location, or irrespective of what hour of the day he comes in, whether that employee is not credited on the company's computation, as a company policy, with having worked from the succeeding quarter hour period? Do I correctly state the company policy?

The Master: Read the question back.

A. I don't know if I have got that all clear.

(Question read.)

A. We couldn't constantly tell the people who computes the time on these cards that a fellow is working at the one end of the department or the other and compute them accordingly. There has to be a general computation of these cards.

Q. (By Mr. Lamb) Now can you answer the question? What is the company's policy with respect to crediting people with time worked from the subsequent quarter hour period? Isn't that the company policy?

A. If I understand the question correctly, it is.

Q. And isn't it a company policy that when a man checks out, that he is credited with having worked from the preceding quarter hour?

The Master: Or to the preceding quarter hour.

Mr. Lamb: Yes, to the preceding quarter hour.

A. To the preceding quarter hour, that is right.

Q. That is true irrespective of the distance from a time clock or irrespective of the bench location on which an employee might be working, or irrespective of any other factor? When an employee reports in, he is paid and his time is computed to the succeeding quarter hour, and when he checks out his time is computed from the succeeding quarter hour.

The Master: I think you have the "from" and "to" turned around.

A. Yes, turned around.

The Master: You mean his time is computed from the succeeding quarter hour when he checks in, and to the preceding quarter hour when he checks out?

A. That is right.

Mr. Lamb: Yes, that is right.

Q. Is that correct?

A. That is correct.

Q. That is the company policy?

A. That is right.

Q. Irrespective of whether the employee is located?

A. And that is applying to the employees in our department we are speaking of.

Q. You are speaking of the employees—in all your testimony, you want it to apply only to the employees in the clay shop?

A. Only the employees over which I have direct supervision.

Mr. Lamb: O. K., that is all.

Re-Direct Examination

By Mr. Nunneley:

Q. And likewise that is a policy irrespective of whether he actually starts to work on that succeeding quarter hour or not?

A. That is right. He may not get started.

Q. And likewise his stopping time, if he actually stopped before, if he doesn't punch out until after a cer-

tain quarter hour, he is credited to it in figuring the time?

A. That is exactly so.

The Master: You have some hourly workers in your department over there, I believe?

Q. (By Mr. Nunneley) Are there any hourly workers in your department?

The Master: Employees that work on a straight hourly basis.

A. We don't—

The Master (Interposing) Or I think Mr. Fittons said so yesterday.

Mr. Nunneley: Men who run the machines.

A. The fellows running the machines, yes, they are hourly workers; fellows running the automatic machines.

The Master: Do you see to it that they work right up to the last minute that the shift goes in?

A. Do I see to it that they do?

The Master: Yes.

A. Quite often we stop as much as ten minutes before the time allotted for us to quit.

Re-Cross Examination

By Mr. Lamb:

Q. Do you know the names or number of hourly employees in your department? • • •

A. I couldn't from that period give you the names, no.

Q. (By Mr. Lamb) Of any of them for 1941?

A. I don't believe I could.

Q. For 1940?

A. I couldn't absolutely give you the names of them.

Q. Have they changed, you mean? • • •

A. We haven't had the same fellows on that machine all the time.

The Master: Have you changed all of the men so that none of the men working in April, 1941, are now working on the machine, if you can recall?

A. It seems to me we have changed them all. • • •

Mr. Cooper: Your Honor will recall that our cross-examination of Mr. Charles E. Doll, Sr., was suspended at the earlier hearings until such time as the plaintiff rested their case, and we would like to recall Mr. Charles E. Doll, Sr., at this time for the purpose of cross-examination.

CHARLES E. DOLL, was thereupon recalled as a witness, and having been previously duly sworn, testified further as follows:

Cross Examination

By Mr. Cooper:

Q. You are the general-manager of the Mt. Clemens Pottery Company, I believe, Mr. Doll?

A. I am.

Q. How long have you had that capacity?

Mr. Lamb: Do I understand that you say you are calling him for cross-examination?

Mr. Cooper: Yes.

Mr. Lamb: I make an objection to it being cross-examination. • • •

The Master: I don't think I will rule on it until such time as a leading question is asked which would be objectionable, and if it gets to be an issue then I will decide it at that time, but I won't decide it at the present time because I don't know whether there will be any occasion to decide the question.

Q. (By Mr. Cooper) How long have you been general-manager of the Mt. Clemens Pottery Company, Mr. Doll?

A. 28 years.

Q. You have been general-manager ever since the organization of that company?

A. Yes, sir, I built the original plant and have had complete charge of it ever since.

Q. Do your spend a considerable amount of time out in the plant?

A. More of my time is spent on the plant than it is in the office.

Q. And are you familiar with the various departments of the plant, and what operations are performed in each department?

A. I am.

Q. I would like to request you, sir, with reference to Exhibit 30-A, to explain to the court the various departments involved in the plant, and what is done in each department?

A. Exhibit 30-A is a ground plan of the plant. It shows on the south side a railroad siding over which our raw materials come in in loaded cars and are placed at the section of the plant specified as "Clay Bins." The materials are not all clays, but nevertheless for general purpose the storing area of these raw materials is designated as the "Clay Bins."

At this particular point the materials are made up in pre-determined composition, fed into the plunger mills in the slip house where they are mixed with water, and after varying processes in the slip house they are pumped through the filter presses into a plastic form.

These plastic forms are afterwards further processed through pug mills which places the mixture in a putty-like condition to enable it to be formed on the molds.

This clay is then transported to the various clay-forming machines, some of which are—

Q. (Interposing) Excuse me, Mr. Doll. I would like to ask whether or not the operations you have described up to this point are all performed in what is referred to as the slip house or slip department?

A. They are. When the clay leaves the slip department it is in the form to be used in applying it and forming it on the molds. It goes then to the section of the plant generally designated as "clay shop." and in that area it is used on what we generally designate still at this time as hand-operated jiggers. They are really power machines, but they are operated by a crew of three people,

consisting of a jigger man, batter-out and finisher. The jigger man—the batter-out, rather, forms, places the clay on the mold, passes it to the jigger man who in turn jiggers it or revolves it in a machine under a tool which forms a piece of ware by the face of the mold forming the face of the article and the tool under which it is revolving shaping the back.

It then passes through the mangle which is simply a series of shelves operated on chain conveyors which pass through the mangle, circulating among steam coils, or in other sections circulating through a hot-air duct, the intent being that when the product reaches the other end of the mangle it is sufficiently dried and hardened to be lifted from the mold by the finisher without being distorted. It is then the finisher's job to smooth off the rough edges and sponge off the face of the ware, remove any slight imperfections that may have occurred in the processing.

Q. Could you tell me, Mr. Doll, about how long that, or those operations that you have described, consumes?

A. It will take, according to the size and the shape of the article, from an hour to an hour and a half in going through under the machines. We have at other places very large units which we call automatic jiggering machines, in which these same operations are done automatically by these machines. This is a later development, and at the present time the plant is operating under some of both processes.

In the large machines the principles involved are exactly the same, although the operations are automatically done, except in the case I just described, by being performed by hand labor.

After this ware has gone through the finishing process it is then ready to be taken to the loading stations to be put into saggers and loaded on the cars for the first burning.

Q. Is that at the point on the exhibit indicated "bisque car loading?"

A. No, it is taken to the section marked "bisque car

filling." At that point the ware is taken from the trucks, put into saggers, and circulates then on these saggers—the saggers circulate on belt conveyors to the bisque car-loading position where the saggers are stacked onto cars preparatory to going into the kiln for the first burning.

Q. Is that what is referred to as bisque belt system, or isn't there such a thing?

A. Generally speaking, the bisque sagger filling and the bisque car loading and unloading is the bisque car system.

Q. Is that separate from the glost belt system?

A. That is an entirely separate installation and in a separate part of the plant. In the west end of the plant there is also the section known as mold room devoted to the making of the plaster paris-molds on which the ware is formed in the clay department.

These molds are constantly wearing out and deteriorating and have to be replaced at frequent intervals.

Also in the west end of the clay department there is the casting department. That is a department in which we manufacture such articles as cream pitchers, sugar bowls, and items of that type, wherein the ware is formed in plaster molds, but the material is put into the molds in a liquid state, is poured into these hollow molds in a liquid state, and is allowed to stand a certain length of time during which period the solid material—the liquid material next to the mold hardens through the plastic mold putting the water out of the clay and solidifies there so that after it is hardened to the pre-determined thickness the mold is inverted, the surplus material is poured outside and the article is allowed to further dry in the mold before being taken out, and finally when it is taken out it has to be finished by finishers in that department who, in turn, finish the edges and smooth up any defects. After the wear has been loaded on the bisque cars it goes to the west end of the bisque kilns, which is the entrance end of the bisque kilns or the charging end as we designate it.

Q. Mr. Doll, is the term "bisque" applicable to the ware from the moment it leaves the clay shop, or doesn't

it reach the bisque stage until after it has been through the kiln?

A. It is not technically bisque ware until it has gone through the burning stage. However, they are known as the bisque kilns because that is the name of the product as it leaves the kilns, simply a designation of the first burning. The cars are put in at intervals through these kilns. The speeds can be controlled, but of course you don't keep changing all the time. That involves quite some firing problems, but they can be run at varying speeds over periods of time.

Q. Approximately how much time is consumed in putting car of ware through the bisque kiln?

A. Well, average time in going through the bisque kiln in the average production would represent about 48 hours from the time the car enters the kiln until it comes out.

The Master: Do you have just one long kiln with gradually increasing and later decreasing temperature, or do you have a series of them?

A. No, our type of kilns, as indicated on the drawing, represents an area in which, starting from the west end, the cars pass through a gradual heating-up zone. That heating-up zone extends about two-fifths the length of the kiln. After getting through the—

The Master (Interposing) You have indicated on the map a distance of about six inches along one of these kilns, which, according to the scale of the map would be about 120 feet for that stage?

A Approximately that. And then the cars enter the furnace zone. The irregular shape of the ground plan of the kilns in the second section shows abutting parts of the brickwork which represent the furnaces. Each one of those represents a furnace or a place at which there is an oil burner generating heat in a furnace, which is in turn circulating through the kiln into the pre-heating zone. The products are drawn up through a main tunnel by means of draft fans which are on the west end of the kilns.

The Master: But the temperature is greatest immediately adjacent to the furnaces?

A. The heat cycle shows a steadily mounting curve until we leave the last furnace. Then it is a decreasing curve from that time till the ware comes out. If these cars in coming out were just allowed to cool naturally, they would come out at such excessive temperatures that you couldn't handle them and that the ware would be broken through the shock.

So at the east end of the kilns we have fans that are blowing quite a large quantity of room air into the kilns which passes straight through them and serves as a cooling medium for the cars as they are approaching the discharge end.

Q. (By Mr. Cooper) Is that operation handled entirely by machinery, or are there firemen or some such work classification at work at that kiln?

A. Well, the cars are moved along the tracks—there are miles of kiln car tracks both inside and outside of the kilns. The cars on the tracks outside of the kilns are moved in either direction by means of chain conveyors that are underneath the cars, and in going through the kilns, they are pushed through the kilns from the charging end by means of hydraulic pushers, the temperature being such that you couldn't use any mechanical device through the kilns. So that the train is pushed through by hydraulic pushers, pushing against the whole train of cars.

Q. Do the kiln firemen work at the point indicated on the exhibit as the bisque kilns, or is the work place of the kiln firemen elsewhere?

A. The kiln firemen—their duties require them to keep circulating during the time that they are on the job, keep circulating up and down the aisles between and on either side of the kilns, watching the individual furnaces, watching their instrument panels and keeping a general oversight as to just what is happening both inside and outside the kilns.

Q. How many hours a day are kiln firemen on the job?

A. The kiln firemen work on eight-hour shifts 24 hours a day. Of course, the kilns are in operation 365 days a year.

Q. Have you ever had occasion to be out in the plant and observe the changing of shifts among the kiln firemen, Mr. Doll?

A. Yes, I see them daily.

Q. Could you tell the Court what happens when one shift succeeds another?

A. Well, for instance, if one shift is finishing up at three o'clock in the afternoon the men on the other shift arrive at whatever time they may desire previous to the time the other man is stopping his work, and you will invariably see them during that time engaging in conversation as between the man who is just coming on and the man who is leaving his work. That conversation may be something of a private nature or it may be with regard to how the kilns are operating and how things have been going, and what the schedules call for the work to be done.

The Master: Does the new shift of firemen coming on proceed to a particular place along the line of the bisque kilns?

A. Your Honor, what you might say headquarters for change of shift is the instrument desk at one or other of the kilns. There is no rule regarding that. That is for the firemen to determine between themselves. Each kiln has quite an elaborate system of controlling instruments on it. These kilns are oil-fired. The temperatures are automatically controlled by instruments set to produce a certain temperature which the instruments do by automatically controlling the flow of the oil, and those desks—

The Master (Interposing) Mr. Lamb has to go now. Let me ask this question out of curiosity, how high does the temperatures run at the highest of these kilns?

A. The bisque kilns go to about 120 degrees Fahrenheit.

The Master: We will adjourn at this time unless you had one sentence to conclude.

A. No. * * *

June 18, 1942

By Mr. Cooper:

Q. I think, Mr. Doll, when court adjourned yesterday you were describing the operations in the bisque kilns, and the function of the kiln firemen. Would you please continue the description of the operations in that department?

A. I think I mentioned the fact that the kiln firemen and the attendants on the kilns, while they circulate around the kilns themselves in taking care of their duties, that their main headquarters are generally at the instrument panel boards at which there is a desk on each kiln. There is one attendant and one fireman in charge of each battery of kilns on an 8-hour shift, and these particular attendants, the fireman and the pusherman, as we call him, continue in charge completely in their particular shift until the expiration of the time of their shift when the next crew takes hold. They are not relieved of their duties until their stopping time has come to an end, and the starting time of the next shift takes hold. That is true of all of the kilns. After the cars leave the east end of the bisque kilns—

Q. (Interposing) Pardon me. If I remember correctly, you said yesterday that it took an average of about 48 hours for a car to go through the bisque kilns?

A. That is correct. After the cars come out of the bisque kilns on the east end, they are put over on the unloading—they are either put into storage or on the unloading line. The unloading line of the bisque belt system is the east end of the conveyor system that is marked on the plan as "bisque sagger filling."

At that point the saggers are taken off the cars, the ware is taken out of the saggers, the saggers flow back on the belts to the bisque sagger filling station, and the process begins over again of filling the saggers and loading them for the bisque kilns.

The ware that is taken out of the saggers at the bisque unloading station goes to the section of the plant shown on the plan as a dipping department. This is a combination department in which both the brushing and the dipping or glazing are done.

The Master: Pardon me. What is the appearance of the ware after it comes out of the bisque kilns? Is it hard by rough and finish?

A. That is correct. The bisque ware has its complete fired strength, but it has an unglazed surface, and it is porous, partly porous.

As this ware comes through from the bisque kilns, it frequently has little rough clay particles or portions of sand, things of that kind, on it. And, before the glaze can be applied, it has to be brushed.

Part of this brushing is done by hand brushes and part of it is done by passing the ware through machine operated brushes which clean the particles off, and this work is done by people known as brushers.

After it has been brushed, it goes to the dippers, hand dippers or the glazing machines.

In days gone by, all this ware was dipped by hand; that is, each piece individually was held by the dipper and immersed into a tub of liquid glaze. However, that process has been largely done away with. There is very little hand dipping done now, and the majority of the ware goes to glazing machines.

When it is placed in these glazing machines, which consist primarily of large circular tables on which the pieces of ware revolve on power-operated spindles, and as this table revolves, these turning spindles pass through booths in which there are spray guns that are spraying by means of air pressure the glaze on to both the face and the back of the pieces of ware.

As the ware comes through this glazing operation in the dipping department, it moves to the north to the area marked on the plan as the glost sagger fillers. At that point—

Mr. Cooper: Pardon me. Will you mark this, please?

(A floor plan was thereupon marked Defendant's Exhibit 76, by the reporter.)

Q. (By Mr. Cooper) I show you, Mr. Doll, a document which has been marked for identification as Exhibit 76 and ask you if you can identify it (handing exhibit to witness)?

A. This is a floor plan of the glost loading and unloading system showing its connections as well into the glost ware rooms with the chipping and selecting belts of that department.

Q. Does it show, in general, the same outline as to the glost system as appears on Exhibit 30-A, except for greater detail?

A. Well, the detail shown on Exhibit 76 is equipment that is installed in the area on the master plan shown as the glost car loading, glost car fillers—

The Master: Glost sagger fillers.

A. Glost sagger fillers, glost unloading.

Mr. Lamb: The master plan you are referring to is Exhibit 30-A. I guess the record can show that.

The Master: Yes.

A. And chippers and selectors.

Q. (By Mr. Cooper) Can you say, Mr. Doll, whether or not Exhibit 76 is an accurate and scaled drawing of the area you have just described? • • •

A. I can so identify it, and I can identify the equipment because I designed and built it. • • •

The Master: I think I will admit the exhibit. I don't think this witness is competent to testify that it is a scaled drawing, because I think only the man that drew it to scale can testify to that, but as to the general location and features of the equipment shown here, he is competent to testify to that. • • •

Mr. Lamb: And the record shows an objection to the admission?

The Master: All right, I think it already does, but it does now.

A. Referring to Exhibit No. 76 as another example of describing the process when we arrive at the glost sagger fillers, this particular drawing shows that there is a conveyor on the outside of the drawing on which the saggers, the empty saggers are flowing on a conveyor belt. There is an area just to the north of this particular conveyor belt where there are a series of sagger-filling stations indicated on the drawing by the diagonal parallel lines, each of which represents a station in which a girl stands, and as these saggers are deflected from the conveyor belt into their loading stations, the girls proceed to fill the ware into the saggers from shelves built in their stations into which the ware has been placed by men who take it from the trucks as it came from the dipping department and put it into the stations as the girls need it.

As each girl fills her sagger she discharges it on to the next parallel conveyor belt to the north. The saggers then flow to the west of that particular conveyor belt where they make a turn on a circular belt at the west end and start to flow in an easterly direction on the sagger-loading conveyor belt.

As they flow down this belt the man whose duty it is to load the saggers on to the cars, takes them off of this belt as they flow by and stacks them on to the cars which are slowly moving forward on what is shown as the loading track.

As each sagger is removed from the belt to go on the cars the belt continues in an easterly direction to a section known as the unloading track, where men, in turn, take the saggers off of the cars that have been fired and place them on to this same conveyor belt. They continue to flow in an easterly direction, then turn south, and again west, and at the point where the saggers turn west we have the sagger-unloading point.

The saggers continue to flow by; the ware that is in them is taken out by men and boys and placed on another conveyor belt running west. This conveyor belt carries the

ware into the glost ware room, or, as shown on master plan number—

The Master: Exhibit 30-A.

A. —Exhibit 30-A, it flows into the section shown as chipping and selectors. At that particular point two functions are performed. On the backs of each piece of ware are three little marks which have occurred there due to the fact that when the ware is being fired in its second or glost burning, you have to keep each piece separate and distinct from the others, otherwise they would all flux together, and they are supported in the saggers on some little clay pins. These little clay pins leave small marks on the back which have to be chipped off by the chippers. At the same time all pieces do not come through perfect and the ware has to be graded and separated into the first quality and the imperfections.

The Master: What percentage of imperfections do you get of ware, generally?

A. Well, of course, you can make or lose a great deal of profit off of the amount of imperfections that you have. That is one of the problems of the business, to keep down the imperfections. We try to operate at an average of not over ten per cent of imperfections.

After the ware—referring again to Exhibit 76—after the ware in the saggers has been placed on the loading track, the cars containing this ware moved in a westerly direction to the transfer track, and when they go on the transfer track they are moved over to an area north of the glost loading system and in between the bisque kilns and the glost kilns. This area consists of a series of parallel tracks upon which cars are stored waiting to be placed into the glost kilns for firing.

The cars then are placed at intervals into the glost kilns generally on an average schedule of about one car every 40 minutes. The cars and their product go through a stage of gradual heating up at the west end of the kilns, then through the fire zone in the center of the kilns and then through a gradual cooling zone on the east end.

When they come out on the east end they are then placed on the unloading tracks and are placed on the glost unloading area as previously described.

The Master: Is the purpose of these glost kilns to heat the glaze?

A. The function is entirely to burn the glaze, develop it into a glaze.

Mr. Lamb: How big are the cars that move into the heat treatment?

A. The cars are about 7 by 5 in length and width, and they stand about 30 inches off the floor, which gives us a loading area above the bed of the car of about 6 feet in height.

Mr. Lamb: Is the ware stacked on the cars when it goes into the kiln?

A. The ware is in the saggers, and the saggers are stacked on the car, one above the other.

Mr. Lamb: I see.

A. After the ware has gone through the chipping and selecting process, it is then ready to go either direct to the packing department if it is going to be shipped out as undecorated ware; or if it is going to have a decoration applied, it is ready to go to the decorating department.

If the ware is to be shipped out undecorated, it is trucked across—it leaves the main building and is trucked across the south siding and into the packing building, which is also a storage building for packed goods, which is a separate building located on the south side of the south siding. The ware is packed in cartons in that building, stored in that building if it is not intended for immediate shipment, or placed in stock piles from which orders are filled which are loaded by conveyors directly into box cars that are placed on a siding between the main building and the packing storage building.

And the ware that goes into the decorating department flows into the area shown on the master plan—what did you say it was?

The Master: Exhibit 30-A.

A. Exhibit 30-A, as decorating. Now, in this department we have decorators engaged primarily in two operations, one the application of decalcomania to the ware, which in our particular case is mainly floral decorations of some kind or another.

Mr. Cooper: Is Exhibit 60 an example of decalcomania.

A. Exhibit 60 is a sheet of decalcomania such as is used in decorating the ware.

Mr. Cooper: Would you please mark this next exhibit?

(A sheet of decalcomanias was then marked Exhibit 77.)

Q. In connection with the work in the decalcomania end of the decorating department, Mr. Doll, can you describe the operations connected with the large transfer sheets such as you have here, and its application to a particular piece of ware?

A. These sheets of transfers or decalcomania are lithographed on duplex paper, what is known as duplex paper. The duplex paper consists of a backing sheet of fairly heavy paper and a very thin tissue sheet superimposed upon that.

The first part of the operation is for girls to strip these sheets. That is, they separate the thin tissue sheet from the backing sheet, as you can see here. That has to be very carefully done, but you can without damaging pull this thin tissue sheet from the backing sheet.

After the girls separate and place together, one on top of the other, a number of these thin decalcomania sheets, and then they proceed to cut them into sections or blocks, as we call them, similar to what I have in my hand as Exhibit 77.

These blocks consist of various sizes of sprays, due to the fact that each particular article, that is, each size plate, or each cup or a certain kind of cup or a particular saucer has to have a spray designed particularly to fit around the rim of that particular article so that they are cut into blocks and given to them as they need

them for whatever particular article a girl may be working on at that time.

The operator has ware adjacent—the decalcomania operator has ware adjacent to her bench, and the first thing she does is to place a coat of size or varnish which she applies with a brush to the parts of the article to be decorated where the decalcomania is to be applied.

She lets this ware stand on her bench a sufficient length of time for the varnish to harden to a tacky stage, and then she cuts out as she requires from these block prints the pieces that she needs immediately to decorate the articles that she has previously varnished.

After placing these decalcomania sprays on the varnished area, the piece of ware, she takes another brush which has been dipped in water, and rubs on the reverse side of the paper so as to get the decalcomania color thoroughly adhering to the piece of ware.

Q. Pardon me, sir. Do you refer now to Exhibit 77, the piece of paper?

A. 77, yes.

Q. Could you show which side is placed against the piece of ware?

A. The lithograph or colored side is placed against the piece of ware. After rubbing that decoration on thoroughly she immerses the piece of ware into water, floats the paper off the back, and leaves the pattern in its color from adhering to the piece of ware. She places the ware, then, on her rack behind her bench for drying, and after that ware has set a sufficient length of time to be safely dry it is ready to either go to the decorating kiln, if no further processing is to be applied to it, or if there are other parts of decorations to be added, it goes to the people doing that particular line of work, or the people come to the racks of decorative ware, and may—and in the case of the pattern I am showing here, proceed to place a gold line on the edge of all the pieces that have previously been decalcomaniaed.

The major portion of our decorating is done by either the decalcomania process or by the application of gold

and color, by people who apply it with brushes for finishing off the design of the finished decoration.

The ware then is trucked to the decorating kilns which are shown in the north part of the decorating department by the lines on the print showing the outline of the kilns, and while they are much smaller, they are shown similar to what the bisque and glost kilns are.

Q. On Exhibit 30-A, those decorating kilns are below the word "glost" "Unl"?

A. That is correct, below the glost unloading system, south of the glost unloading system.

The ware goes into these kilns, is placed on cars, goes into these decorating kilns on the west end, comes out on the east end. It is a short firing cycle through these kilns, being about 8 hours, and after emerging from those kilns it is again inspected, and finally trucked to the packing department for packing into cartons.

The Master: These decalcomania sheets, you don't make them in your plant; you buy them?

A. No, the decalcomania sheets are printed for us by American Manufacturers. There are two parts of the general floor plan, No. 30-A, which shows on the south side of the plant the boiler and engine room. Next to that the sagger department in which the saggers are made for both the bisque and the glost cars. These saggers have only limited life. They deteriorate under the continuous burning, and finally have to be destroyed and replaced.

The Master: What material are those made out of?

A. They are made of a composition of fire clays together with a ground-up mixture of some of the old saggers. We are able to reclaim part of the old saggers by breaking them up and regrinding them and using a certain percentage of it in a fresh mix.

Also next to the sagger department comes the headquarters or maintenance department. Next to that the glaze room in which the materials are stored that enter into the glaze. These materials are weighed into batches as needed and placed in the revolving pebble mills. These mills consist of revolving cylinders into which the dry

materials are placed, water is added, and inside the mills there is quite a quantity of flint pebbles. The grinding is done by the mills slowly revolving and the pebbles keep falling over each other as the mills revolve, and in that way the material that has been placed in the mills is reduced down to the necessary fineness.

At the extreme east end of the plant there is the office building. In this office building is located one set of toilet and cloak rooms for men and women, for factory use, and on the second floor is a cafeteria. To the north of the glost kiln departments are another series of toilet and cloak rooms for men and women, and at the extreme west end of the plant is a section marked on the plan as "court," in which is located the sprinkler tower. The top of this tower is the water tank.

Q. I think you perhaps mentioned the boiler and engine room, Mr. Doll?

A. I did.

Q. And can you state what operation is performed by the boiler man?

A. In the boiler room we have three boilers. The function of our boilers is almost 100 per cent the supplying of steam for drying and other minor operations around the plant.

Next to the boilers is an engine room in which we have a generator and a stand-by engine. The plant is operated primarily with Edison current and we only operate the engine room in case of extreme emergency or breakdown of the Edison power, in which case our engine room could supply enough current to keep the kilns in operation on a temporary basis.

During the winter season and during the normal, the five days operation of the plant, even in the summer, the boilers are kept in operation on a 24-hour basis, with men working on eight-hour shifts. Each one of the boiler firemen is completely in charge of the boilers and held strictly responsible for the boilers from his starting time until his stopping time, when the man following him takes over the responsibility at his starting time.

Q. By the way, sir, do those boilers operate with coal or oil?

A. The boilers are operated with coal. The kilns are fired with oil.

Q. I think you also mentioned yesterday, Mr. Doll, the job of the pressmen in the slip house. Could you state just a little more specifically what the pressmen do?

A. Well, both the charging of the mills for the slip department and the operating of the filtering presses through which this slip is pumped is customarily done on a 24-hour basis. The pumps supplying the presses, of course constantly pumping slips into the presses, and this slip that is being pumped into the presses has to be replaced with fresh material coming from the charge mills into which the men are supplying the material.

Q. Is that slip simply liquid clay?

A. That is a combination of the mixture of all materials with water. These men also operate on an eight-hour shift basis.

Q. How many shifts a day, Mr. Doll?

A. Three shifts a day. And each shift is working and responsible for and completely in charge of the duties of that particular shift until the next shift takes over.

Q. How many days a week do they work there, Mr. Doll?

A. Five days.

Q. And what is their basis of compensation?

A. The basis of compensation is the dozens produced by the clay department from the clay that they have supplied to the clay department.

Q. Then does the amount that a pressman receives for a day's work depend on the amount of material which is turned out on his shift?

A. Directly. In other words, the whole process is continuous. If they did not prepare the clay, the clay shop couldn't make the dozens, and unless the clay shop produced the dozens, these men couldn't make the presses, because there would be no demand for them.

If you will notice in the description of the process as

I have tried to give it to you, that it is practically continuous from one end to the other. That is, from the raw material stage, as the ware is made, it is a constant flow right through to the cars in which the finished product is finally loaded.

The Master: Because of that, the production that any department can turn out is limited not only by their own ability and efforts, but also by what the other departments can turn out?

A. There is a direct inter-relation.

Q. (By Mr. Cooper) How many men work on each shift in this pressmen division in the slip house?

A. There are two mill chargers and two pressmen.

Q. And whether or not the amount of compensation depends upon the amount of work that the entire crew turns out during the eight-hour shift?

A. It does.

Q. Could you state, Mr. Doll, whether or not the glost belt system, as you have described it, is a common feature in the pottery industry?

A. It is an exclusive feature at the Mt. Clemens Pottery.

The Master: How are other potteries run? Do they have just individual kilns that they fire?

A. Continuous burning kilns of one form or another are rather generally in use in the potteries now. There are a few that still have the old beehive or intermittent kilns, as we call them, that you customarily see in pictures of potteries.

The Mt. Clemens Pottery Company was the home of the development of the tunnel kilns and the continuous burning process, and the development gradually spread to the other plants, so that they have something comparable in most of them now to our burning processes, but nothing of the character of our mechanical handling of the saggers through these loading and unloading systems that we have. Those are exclusive features that we developed. • • •

Q. (By Mr. Cooper) Is the operation of the glost belt system more elaborate or less elaborate than the method employed in other potteries?

A. It is more elaborate from the equipment standpoint, but simpler from the handling of the product.

Q. I think there has been mention made of certain cup machines, automatic cup machines in the clay department. Do you happen to recall when they were introduced, Mr. Doll?

A. The first automatic clay forming machine we installed went into commercial production about January, 1938.

Q. Have others been added since?

A. We have added to those since, but not for production of cups. About January, 1940, we added one for the producing of flat ware; small plates, saucers, articles of that kind.

Q. And there are also, I believe, certain dipping machines in the dipping department?

A. The spray glazing machines were a development that started with the first one going into commercial production in 1939, with the final installation of a fourth unit in about July, 1941. Your No. 2 and 3 units came in between.

Q. I believe there has been some discussion as to the location in the plant of various witnesses who have testified here went on their job. I don't believe that that is complete, however. Can you show on Exhibit 30-A, Mr. Doll, the location within the plant where Ernest Trombley's work station was located?

A. That is Earl Trombley?

Q. Earl Trombley?

A. Earl Trombley worked in this area shown on Exhibit 30-A as glost sagger fillers.

Q. Did Steve Anderson and Lillian Socia both work in the area indicated on Exhibit 30-A as dipping?

A. That is correct.

Q. Would they have any particular fixed station throughout the period of two or three years, or would their work take them to various places within the department?

A. It was necessary for them to move to different places in the department.

Q. And where, if you can show on Exhibit 30-A, would

Nicholas Dacko work during that portion of the time that he worked as a glost unloader?

A. Nicholas Dacko worked in the area shown on Exhibit 30-A as glost unloading. I think he also testified that at one time he was a—some months was grinding bats, in which case he worked in the sagger department.

Mr. Cooper: I offer in evidence, if the court please, Exhibit 77. That is the decal transfer sheet.

The Master: Any objection?

Mr. Lamb: No objection.

The Master: Admitted.

Q. (By Mr. Cooper) Before you built the plant of the Mt. Clemens Pottery Company, Mr. Doll, did you have experience in other potteries?

A. Yes. I have been connected with potteries since I was 17.

Q. What, in a general way, was the nature of your prior experience in the pottery industry?

A. Well, I have been, in my years of experience, office boy, foreman, superintendent, sales manager, and general manager.

Q. Since assuming the management of the Mt. Clemens Pottery Company, have you retained the familiarity with the general practices in the pottery industry?

A. I have.

Q. By the way, is there any particular feature of the pottery industry which facilitates obtaining familiarity with the general practices?

A. Well, it is comparatively simple to know what the industry in general is doing, due to the fact that about 80 odd per cent of it operates under a—well, about 80 odd per cent of it are plants that are members of the United States Potters Association. This association for the benefit of its members, conducts negotiations with a national brotherhood of operative potters, and their labor agreements are made with that organization and are uniform throughout the plants of the association.

Q. Does your company belong to this association?

A. We do not.

Q. By the way, is the union that you speak of affiliated with the A. F. of L. or the CIO?

A. They are an A. F. of L. affiliation.

Q. You said, I think, that some 80 or 88 per cent of the industry is represented in this association that you speak of?

A. It is something over 80 per cent.

Q. By the way, what percentage of the dinnerware production of the pottery is represented by the Mt. Clemens Pottery Company's production?

A. About 12 per cent.

Q. Can you state, Mr. Doll, with reference to this collective bargaining agreement that you spoke of, whether there is a general custom in the industry as to computing hours worked, and if so what it is?

Mr. Lamb: Objection. As I understand it, this company isn't even a participant in that association.

Mr. Cooper: The custom is nevertheless material, your honor. It doesn't mean that they don't follow the same customs, or that they do.

Mr. Lamb: There is no showing that they do.

The Master: Well, if he knows what the practice is in other potteries, I will take it as evidence. One citation was given here, or a quotation from a wage and hour opinion, and I think according to my recollection, Mr. Lamb quoted it at the time and stated that the practice and conditions prevailing in other plants, or in plants in general in the industry, would have some bearing upon the interpretation of the wage and hour act. I do not suppose it would be conclusive, but I will take it as evidence.

A. Will you read the question?

(Question read.)

A. To my knowledge, in the plants that we have referred to, the method of computing hours is rather slipshod. These plants are built as a rule in the open with numerous doors around them, and in fact I think that our—I know that our plant is the only plant in the industry that is surrounded by an industrial fence, and where employees all enter and leave from the one en-

trance. The customary practice in the other potteries is to allow the piecework employees to enter and leave at will through almost any doorway or entrance that there may be around the outside of the plants. Time clocks are used very little and only for hourly working operators. The balance, the piecework operators' time is generally kept by the foreman in the departments, noting down each day the number of hours that the employee claims to have worked.

The Master: Are most of your competing potteries located in Ohio?

A. They are located in the Ohio section, that is in the eastern Ohio section, in and somewhat adjacent to East Liverpool, and you will find that the custom prevailing in one is pretty much followed out by the others.

The Master: In the pottery business, is the business concentrated in the hands of a few large potteries, or are there a great many small units?

A. From the standpoint of the sales volume, the large part of the total sales volume would be perhaps in about five companies. The largest one of those companies, though, has about half a dozen plants, scattered plants, and then there are a number of smaller concerns scattered throughout that general area of Ohio. There is very little dinnerware production in any other part of the United States, outside of the one plant in Michigan.

Q. (By Mr. Cooper) By the way, how does the plant of the Mt. Clemens Pottery Company compare in size with the Ohio plants that you speak of?

A. Well, from a standpoint of an individual producing unit, we have the largest individual producing unit in the country. There is one company whose total volume of business is larger than ours, but their output is divided into about five plants.

Q. Going back to the method generally employed in the industry as you have described it in computing hours worked, can you say, Mr. Doll, whether or not that practice and that system is supported by practices under the collective agreement to which you referred?

(Objection overruled.) • • •

A. I am very well acquainted with the other manufacturers and learn of their conditions and what they are doing, by visits that I have made to their plants, by conversations with the owners or the operators, and also by the fact that we receive the copies of their agreements whenever they are made, and know what is provided for in these agreements. One of the clauses in these agreements is that they—

Mr. Lamb: An objection. If he is going to discuss a clause, we should at least have it. • • •

The Master: I think it is a proper subject for expert testimony. Go ahead. • • •

A. The potteries operating under an agreement with the National Brotherhood of Operating Potteries, can individually only install time clocks through an agreement entered into between the individual plant and the local operating within that plant.

Mr. Lamb: I ask that the answer be stricken.

The Master: I will let it stand.

Q. (By Mr. Cooper) Whether or not, if you can say, a considerable portion of the industry represented under this collective agreement does not use time clocks?

Mr. Lamb: Objection.

The Master: Overruled.

Mr. Lamb: Unless he names the companies.

A. To my knowledge, time clocks are very little used in these plants, except for a limited number of day wage workers.

Q. (By Mr. Cooper) By the way, how did you happen to install time clocks at the pottery company, Mr. Doll?

Mr. Lamb: Objection.

The Master: Overruled.

A. Many years ago we had time clocks for a few hourly workers, but we did not have pieceworkers on time clocks. We first put all workers on time clocks about 1933 or along in that period when NRA first came into existence.

Q. How many clocks were installed?

A. The first clocks—well, back at the time that we only

had the hourly workers on the time clock there was simply one clock in the whole plant. After we put all employees on time clocks about 1933, we installed clocks A and B shown on Exhibit 30-A.

Q. By the way, are they both the same type of clock?

A. They are not. Clock A is an International, operating on an entirely different mechanism than clock B, which is a Stromberg electric.

Q. At the time the time clocks were installed back about 1933, was a method set up to compute the number of hours an employee had worked?

A. Yes, a method was set up at that time.

Q. Did you have something to do, Mr. Doll, with devising that method?

A. I did.

Q. Can you describe what the system is, and how it was set up?

A. Well, the system that was set up at that time is the same system that has been in operation ever since; that is that the record of attendance of employees was to be recorded on the time clocks, that the hours they actually worked were to be entered on the cards daily for the benefit of office records as well as for the benefit of the employees knowing the time that had been charged to them.

Q. Was any period of time fixed with reference to when an employee could enter the plant and punch in in the morning?

A. The original rule was that the time clocks would be open for 14 minutes before the starting period. • • •

Q. (By Mr. Cooper) Has that same rule been followed ever since down through the period involved here?

A. It has.

Q. By the way, before the time clocks were installed, and this system set up, was there a limitation as to the time when a piecework employee could enter the plant in the morning?

A. No, there was not.

Q. May I ask, Mr. Doll, how you adopted that 14-minute interval?

Mr. Lamb: Objection.

The Master: Overruled.

A. As I previously testified, I have been in the business, actively engaged in manufacturing or supervising manufacturing, for many years. I was entirely familiar with the habits, the reasoning, and the general custom of employees as to coming to work, and also entirely familiar with the time element required for the average person to get himself or herself ready for work. Consequently, in adopting the 14-minute period as reasonable, or as a maximum period that people could utilize to get themselves ready for work, I was following a knowledge of the actual conditions involved together with an understanding of human nature and the application of a common sense rule. • • •

Q. Was that the same 14 minutes on the clock for all the employees, or were there different 14-minute periods?

A. Well, there would be a 14-minute period before whatever the starting time might happen to be in the department, and of course, the starting time was different in the different departments.

Q. And there would be an allowance of 14 minutes before the starting time in the employee's particular department, is that correct?

A. That is correct.

Q. What was the situation with reference to the close of work and punching out of the time clock?

A. They were allowed a 14-minute period in which to leave or get from the department to their time clock and during which to perform any other personal duties that they might have to do and want to do before being charged with another quarter of an hour.

Q. And what was the purpose in setting up this 14 minute period?

Mr. Lamb: Objection.

The Master: Overruled.

A. The purpose was two-fold; one was to establish a rule that was fair to the employee, as well as a rule

that insured the employee being ready and available for production at the established starting time.

Q. (By Mr. Cooper): Whether or not there was any requirement as to the time an employee would punch the time clock?

A. He was permitted to punch in at any time between the 14 minutes and his established starting time.

Q. Was it a matter of the employee's convenience as to when he wanted to punch in?

A. It was, yes.

Q. Suppose that an employee whose starting time was 7 A.M., punched the time clock at exactly 7 A.M., as of what time would his work be computed as having begun?

A. As of 7 o'clock.

Q. In setting up this 14-minute period, Mr. Doll, did you take into consideration your observations over a period of years of the practices of employees in coming into the plant and going to work?

A. We did.

Q. What part do the time clock cards play in this system of computing the hours of work, Mr. Doll?

A. They are first of all a record of attendance.

Q. Could you keep your record of the hours of work without using time clock cards?

A. We could.

Q. Is it more convenient from the viewpoint of office work, and so forth, to have the time clock cards, or would it be more convenient to not use them?

A. It would be more convenient to the office to use time books.

Q. Is there a more or less established book system that you refer to?

A. Well, the wage and hour law permits the use of time books of any system that adequately reflects the hours that people actually work.

The Master: What is the time book system that you refer to?

A. The time book system that we could use and which would be simpler if certain aspects would be for the

foreman of each department to keep a time book in which was recorded the names of the employees and the hours worked.

The Master: Would the foreman under that system that you speak of, enter the time that the employee arrives in the morning and the time he leaves at noon?

A. No, he would simply note the hours worked.

The Master: Does the employee sign the entry or participate in any way in the entry?

A. Such systems are in use in various plants where they don't, or where they do sign.

The Master: Then why do you resort to the time clock method of keeping the record of hours worked?

A. Because of the fact that we thought that the time clock method would do away with any possiblity of a dispute as to the attendance, or more especially the fact as to whether or not the person really was getting there in time to be ready for work, whereas the other system, a person might slip in late, and the foreman afterwards when he asked him, well, he has been here all day and put him down for 8 hours.

The Master: Do I understand the testimony you have given that if the established starting time is 7 o'clock, you ask the employee and want the employee to be at his place of work and ready to start production work at 7 o'clock.

A. That is correct.

The Master: You also mentioned that you didn't care whether the employees checked in at the time clock at 14 minutes to 7 or whether they waited until one or two minutes to 7 or even at 7 o'clock, that they would still get credit for starting at 7. How do you reconcile the two statements?

A. Simply this, that the responsibility we place upon the employee is to be ready for work.

The Master: If he checks the time clock in at 7 o'clock, he obviously can't be at his place of work at 7 o'clock.

A. No, we realize that he wouldn't be starting work until after. But the question was asked me if he did punch in at 7, would he still get credited for having started at that time. Well, under the rule of recording the time, he would, but actually he would not have started at that time.

The Master: And actually the plant management would disapprove of his coming in regularly and punching the time clock at 7 o'clock?

A. His foreman would certainly remonstrate with him about it. That actually happens frequently where people have to be cautioned about it. We don't fire them on account of it, because the big majority of them realize the reasonableness of it and finally adjust themselves to it.

Q. (By Mr. Cooper) Then this system as you have described it, of computing hours of work, has been in effect at the Mt. Clemens Pottery Company down through the period involved in this suit and for about how many years before that?

A. If my memory is correct, it is just when NRA went into operation, which I think was along about 1933. It had been in operation then about 8 years at the time of the suit.

Q. And in retaining the system through this period of time, Mr. Doll, were you familiar with the practices as you have described them in other industries of keeping time on a time book without use of time clocks?

A. I was. We felt this was a much more thorough and fair system.

Q. Were you familiar with the interpretative rulings of the wage and hour division to the effect that time clocks were not required?

Mr. Lamb: Objection. * * *

The Master: I think I will take his testimony subject to the objection in order to get the testimony on record. I don't at the present see just the materiality of it, but I do think your question was in the leading form and you should ask him to what, if any, extent, rulings of the

wage and hour act or department were taken into effect in establishing the system, rather than referring to a specific ruling.

Q. (By Mr. Cooper) Were you familiar, Mr. Doll, with certain interpretive bulletins or rulings of the wage and hour division with reference to the use of time clocks?

A. I have read such.

Q. Have you been familiar with them for quite a period of time?

A. I have since the—it is my recollection since shortly after the law went into effect.

Q. And were you then familiar with those as you continued this system of computing time through the period involved in this suit?

A. I was.

Q. Can you state, Mr. Doll, on the basis of your observations and knowledge, whether or not the employees of the pottery understand the system under which hours of work are computed?

Mr. Lamb: Objection.

The Master: I think that asks for a conclusion. I will sustain the objection to that.

Q. (By Mr. Cooper) Have you ever had complaints from employees with reference to, for example, the matter of computation of the size of their pay checks?

Mr. Lamb: Objection.

The Master: Overruled. That is one of the issues.

• • •

A. In the making up of payrolls, there is always the possibility that either through a recording or through a calculation, an error might be made. An employee might be over-paid. Occasionally an employee might be under-paid.

In the case of the under-payment, which, of course, would be entirely a matter of a mistake or an error, the employee will so report to his foreman, and the foreman will bring the matter to the office, either taking it up

himself and having the matter investigated for the benefit of the employee, or, as frequently happens, bringing the employee to the office with him, and, of course, where an error is shown, it is promptly corrected.

Q. (By Mr. Cooper) Did you ever fire an employee for making such a complaint?

A. We certainly have not. In fact, we welcome them doing it when they are right on the matter, or even if they think they are right in the matter. We would rather have them come to the office and satisfy themselves than to harbor any ill feeling.

Q. I will ask you whether or not any of those complaints have related to the matter of computing hours of work?

A. They have never.

Q. Whether or not any employee has ever advised you that he felt he had worked longer hours than was shown on his time clock card?

Mr. Lamb: Objection.

A. We have never had an instance of that kind.

The Master: Overruled. * * *

The Master: Do the employees ever come to you and make complaints in person? * * *

A. The way that I would learn of these instances, your Honor, is this; the fact that I circulate throughout the plant so much, and I am very closely in touch with our foremen and department heads, and we stop and daily talk over this, that, and the other. They are very prone to report things of this kind to me—

The Master: Who do you mean, "they," the employees or the foremen?

A. No, the foremen are very prone to report to me particularly if they thought that there had been any delay or not enough promptness on the part of the office in conducting an immediate investigation, or if they thought the thing indicated some carelessness on the part of the office employees, that I should know about it. But if, on the other hand, the foremen were receiving complaints

with regard to the hours charged to an employee, which would involve company system or company policy, that would be very promptly reported to me by the foremen.

The Master: Does he have instructions of that sort, that complaints resulting from company policies should be reported to you?

A. Absolutely, that is one of the things we think efficient management must have, and that is sources of getting first-hand information. • • •

Q. (By Mr. Cooper) Are the computation sheets open for employees' inspection?

A. Absolutely, at all times, and when an employee questions a record he or she is brought right to the computation sheets.

Q. Can you say from your observations whether or not there is any particular practice in the decorating department as to the keeping of notebooks by the individual operators?

A. In our decorating department they operate under a system whereby they check their own notations with the department records in charge of the foreman before the final pay sheets go to the office.

Q. Do I understand you correctly that a girl keeps track in a notebook of her own production?

A. That is correct.

Q. And checks that against the foreman's figures?

A. That is it.

Q. Before the report is sent to the office?

A. As a matter of fact, in that particular department we accept their figures.

Q. Is it true that in certain departments a slip showing the inspector's count of the pieces done is given the employee so that he will have a duplicate of the company's record?

A. In the clay department they have duplicates of their production.

Q. And how is the production kept track of in the brushing and dipping department, for example? Is the

employee's count taken as to the amount of production for which he will be paid?

A. The employee's count is accepted in the brushing and dipping department.

The Master: What check do you have on that to determine whether or not the employee is putting in too high a count?

A. The check we have on it is by a comparison of the total dozens shown by the fill of the cars as against the employee's calculations as total dozens produced.

The Master: Do you make a daily check on that?

A. Those are checked per pay.

The Master: Do they always come out exactly even?

A. They don't come out exactly even. While I don't think—we have never found evidences of a deliberate attempt on the part of employees to stuff their count, the trend of the difference is a little in the employees' favor.

Q. (By Mr. Cooper) Going back, I would like to ask you, and perhaps I should limit this particularly to the period involved in the suit, whether you spend a particular portion of your time in the operating portion of the plant?

A. As I have previously testified, I am out in the plant considerably more times than I am in the office or engaged in other duties.

Q. You have some opportunity, then, of knowing plant problems and plant procedures from first-hand observation?

A. I make a point of adjusting my duties so I can have that.

Q. Have you had occasion to observe the situation in the plant in the morning as the employees come in for the day's work?

A. I frequently see the employees arriving in the departments.

Q. By the way, can all the departments start out at once, at the same starting time?

A. Throughout the whole plant, in our type of opera-

tion, the operation does not adapt itself to all departments starting at the same time.

Q. Could you describe how the plant is put in operation in the morning, describing what operations have to precede others as the day's production commences?

A. Well, starting with the slip department, that department, operating on a 24-hour basis, the one 8-hour shift follows the other one in natural sequence, and they are responsible for preparing in their 24-hour period enough clay to keep the clay shop in production during their two-shift basis.

The clay department; having a starting time generally of 6 A. M. in the morning, is based upon so splitting the time of the two shifts so as to not make either the morning shift abnormally early in coming or the second shift abnormally late in going home, and of course those shifts switch from week to week. They are not always the same mornings or the same evenings.

Then we get down to the kiln departments where, of course, we have a three-shift basis there, and that automatically takes care of itself. After we leave the clay department, practically all the other departments are on a single shift basis, with starting and stopping time fairly close together.

So that your shift in hours is to a big extent controlled by the three, two or one-shift proposition.

Q. There are, then, different starting times for the different departments?

A. That is correct.

Q. Can you state some typical starting times for the various departments at the beginning of the day? For example, what is the normal starting time in the clay shop?

A. Well, the clay shop normally starts at 6 o'clock.

Q. Are there other departments with a regular starting time of 7 o'clock?

A. Yes. The department in which the clay ware is loaded—that is, the bisque loading department—they will

start sometimes at 6:30, sometimes at 7 o'clock. And we come down to the other departments, basically they are on a 7 to 7:15 or 7:30 starting time basis, according to conditions that prevail over different periods of the year.

Q. Have you had occasion to make any observations, Mr. Doll, of the employees coming in during this interval and punching in at the time clocks?

A. Yes, I have seen them on the early shifts as well as afternoon shifts. I know how they line up and the general conditions connected with the checking through on the clocks.

Q. Would you please describe that situation?

A. Well, we will take a typical instance of, we will say, a department or a group of departments that are going to start at 7 o'clock, and in which the time clocks are opened at 14 of. In a case of that kind you will find a certain number of people, the early birds, who are lined up at the clock on that particular morning, waiting for 14 minutes to come. When the signal is given that the clocks are open and they can begin checking in, they start to go through.

Now, depending upon the length of that line determines how many people go through during the early part of the 14 minutes, but after those that have accumulated and those that keep straggling in while the line is moving up or going through, you are gradually approaching the end of the line.

After the end of the line goes through, why, then, what you say,—the people are coming in in between or half way point between the opening of the clocks and starting time; they begin to straggle through and finally you get down to the real stragglers who are just beating the gun by a few minutes, or just barely getting in on time or will be late in starting.

It is very simple to tell from the line-up how much delay there is for the people at the tail end of the line in being able to punch through as against the people who are at the head end of the line.

The Master: I take it that more employees come in at 7 o'clock, or on that shift, than at any other time?

A. As far as one individual time clock is concerned there probably were on time clock B more people coming in around that period.

The Master: How many employees, roughly, will have to punch in at these two time clocks A and B, or each of the two time clocks A and B between 14 minutes to 7 and 7 o'clock?

A. You are referring to the period previous to this action?

The Master: Yes, the period of 1938 to 1941.

A. In the case of time clock A, the slip department, which was comparatively a small department, would be punching in earliest. Then when you came to the people coming in for the clay department, there would be in the neighborhood of 300 coming through on each shift. And, over on the time clock B there would be from 200 to 300 going through on that particular clock. • • •

The Master: Do you have any idea how long it takes 300 employees to punch the time clock, pass the clock?

A. Yes, I definitely know. I have frequently checked it myself, and they go through the time clocks on an average of about 25 per minute.

The Master: So that if they were all lined up there at 14 minutes to 7, that would be about 12 minutes?

A. 300 people would take 12 minutes to go through.

The Master: It would be two minutes to 7 before they could all be through?

A. The last one would be through.

The Master: The man that got through at two minutes to 7, would he be ready to go to work at 7 o'clock under ordinary conditions?

A. He would not.

The Master: Then, at the very best some of the employees are bound to be late in going through, are they not?

A. All employees do not get started at work at the starting time.

The Master: And even if they all arrived at 14 minutes to 7 it would still be impossible for all of them to be at their position of work and ready to do production work at 7 o'clock?

A. In the case where as many as 300 or more people were going through a clock.

The Master: All right.

Q. (By Mr. Cooper, continuing): By the way, would it take the same amount of time to get them through the time clock, Mr. Doll, whether they were lined up before the time clocks were opened or whether they came in in various groups or singly during the 14-minute period?

A. I have frequently observed them with that particular thing in mind, and the time would be just about the same except in the case where you have a few brand new employees switched into the line, in which case there sometimes is a little bit of confusion in not being able to grab the card out of the rack, insert it in the clock, and put it in the other side of the rack as quickly as the experienced employee.

Q. I think you referred, also, to time clock B. It appears on Exhibit 30-A, does it not, that there are two time clocks at the point marked "time clock B"? • • •

A. Exhibit 30-A shows an arrow specifically pointing to time clock B. On the other side of the aisle there is a marking which rotates time clock C, but it is not specified on the plan. Time clock C was not installed until about the month of March, 1941. • • •

Q. (By Mr. Cooper): Considering time clock "A" and the time clock which was at point "B" during the period up to March of 1941, what type of time clocks were they, Mr. Doll?

A. Well, "A" was an International, and "B" was a Stromberg, both electric clocks.

Q. Just what would an employee have to do when he

was going through the time clock, as we speak of it, what would be his precise steps?

A. In the case of time clocks "A" and "B", they are similar in this respect, that the employee first locates his time card in the rack, withdraws it from the rack, inserts it in the slot of the time clock, pushes a lever, releases a lever, takes his card out and proceeds to place it in the rack on the other side of the time clock.

Q. And during the period involved what would be the average number of persons going through time clock "B" for the 7 o'clock shift?

A. About 25 per minute—oh, you mean as to the total number?

Q. The total number.

A. The total number going through there at any particular starting time would be between 200 and 250.

The Master: How did you happen to install a second time clock at that point?

A. As a matter of splitting the plant into two pay periods, that is, we pay on a two weeks' period, about one-half of the employees are paid on one period, and one-half on the other.

Now, for the convenience of the employees, the employees on time clocks "B" and "C", use these cloak rooms in the administration building on the east end of the plant, and they are all paid on one Friday. The other employees that use time clock "A" use the cloak rooms on the north side of the plant and they are all paid on another Friday.

The Master: The question that I have in mind is how did you happen to install an additional time clock right opposite the time clock "B"?

A. Oh, this was installed here because there was some congestion in getting through that time clock, and at the request of the employees, it really was, we put in the other clock at the request of the employees.

Q. (By Mr. Cooper): Would there be line-ups that

would occur from time to time during the 14 minute period that the employees would be punching through the time clock? * * *

A. There is always a group congregated ready to go through as soon as the clock is open. While they are moving through, others arrive and come in on the tail end of the line. Finally you really get the line through, then you come to the point where they are arriving by twos and threes, and then finally to the single stragglers coming in on the finish.

The Master: In the clay shop you said there were about 300 employees on each shift?

A. That would be going through the clock at one time.

The Master: That would be going through the clock at one time, and that is not only true in the morning but it is also true at noon when they leave for their lunch half hour?

A. Absolutely, wherever they go in they have to come out.

The Master: And the lunch period is the same throughout the clay shop, that is taken at the same time?

A. Not entirely. The people operating on the automatic machines frequently have a slightly different lunch period than the people working on the hand jobs, or than the people doing other operations in the clay department.

The Master: Is there any considerable number of them working on the automatic machines?

A. There are quite a few, yes.

The Master: About how many?

A. Well, you take from a standpoint of the—any one shift, the number of workers on each machine is—they represent about fifty people.

The Master: So that there would still be about 250 people who were not working on the automatic machines and who would go out to lunch at the same time?

A. That is right.

The Master: And when they leave for lunch, at best it would take them ten minutes to pass the time clock?

A. It would take them on the same basis, if they were all lined up, it would take them ten minutes going out.

Q. (By Mr. Cooper) Would the number of employees that would get through the time clock in the course of a minute vary somewhat, perhaps up or down from 25, depending upon whether or not there were a group waiting in line with their cards all ready.

Mr. Lamb: Objection to the form of the question as leading.

The Master: Read back the question.

(Question read.)

A. When I—

The Master (interposing): Just a minute. The witness can state as to whether or not the 25 per minute average which he gave is subject to variations, depending upon different factors, and state the factors that affect the variation, if there is the variation. That will eliminate any leading form to the question.

A. I have checked them and observed them myself, and I have checked them as fast as 28 and I have checked them as slow as 22. And I know that the 25 is a fair average.

Now, the variables that cause that are, as I said a bit ago, the speed with which an experienced worker who has been doing that for years, takes the card in and out and punches it and puts it in the other rack and goes on his way, as against the beginner who is not so familiar with things.

And then also, like in all operations, piecework operations or anything else that human beings do, everybody—or one person is not necessarily as fast as another. Consequently, according to the way the fast or the slow ones may be grouped in there is what determines your average speed in going through the clocks.

Q. (By Mr. Cooper) Are employees expected or required to punch the time clock at any particular time during this 14-minute period?

A. They are not.

Q. Are they expected or required to go to work as soon as they can after punching the time clock?

A. They are not—they are told not to, and at the same time they do not.

Q. Are you familiar from actual observation, Mr. Doll, with the activities of employees in the plant during this 14-minute period before an established starting time?

A. I am.

Q. Would you describe the situation?

Mr. Lamb: Objection, unless he identifies the particular employees and the days he is describing them.

The Master: I will overrule the objection. General testimony has to be given on that and was given in behalf of the plaintiffs and can also be given by the defendants.

A. It is a very interesting study to observe a thing of that kind. In years gone by there might not have been any particular importance attached to it, but under present conditions those things are noted and observed.

First of all, after the employee has punched the time clock, you note, if you are really studying the situation, that the speed or the rate at which different ones walk from the time clock to his department varies quite decidedly.

The gait at which they walk is quite different. If someone further up the line is walking very slowly some people will continue,—will go along adjusting their gait to the gait of the person up ahead. If, however, somebody thinks that gait is too slow he may cut around and get up further in the procession.

That is the first thing.

The second thing that is interesting is that despite the fact, as is shown on Exhibit 30-A, there are toilet rooms to which the employees may go before they arrive at the time clock, that after they have gone through the time clock if they happen to pass another set of toilet rooms, why, some of them will stop in there; or, they will stop at the drinking fountains as they go along. They invariably

come in in twos, stroll along in twos and threes chatting and talking as they go among their own particular group. If they are passing employees of another department in their line of travel they will sometimes stop and talk to these other employees.

I have seen them even digress from the regular line of travel to his department and go over into another department where he may want to say a word to an employee in that department if that department happens to be working.

When they get down to the particular place in the department at which this employee is going to go to work, unless he has come in late from the standpoint of punching in close to his starting time, he is quite leisurely in getting himself ready and taking care of the little duties connected with the personal things that he has to do to get ready to start.

We have a good bit of conversing among our employees, perhaps more than what they would have in some other sections due to the fact that we have such a large number of them that are interested in boating. Some of them have boats of their own. In fishing, in pheasant shooting in the fall, and in deer hunting and in things of that kind.

Mr. Lamb: I object to all this type of conversation.

The Master: I will overrule it.

A. And I know, as a mater of fact, that they spend quite a bit of time in visiting back and forth. The time is their own. You can find no fault with that. And, there is a kind of a sociability connected with those starting periods. And then they go about,—every job has a lot of little personal things to get ready to enable them to get started promptly and to enable them to operate efficiently. These people are 98 per cent on piecework operations. They become very proficient at it. They know the things that they should do ahead of time to get themselves properly set to start promptly and to make the best use of their allowed working time. • • •

Q. Could you state, Mr. Doll, whether the finishers in

the clay department sometimes purchased their supplies during this period that we were talking about before the noon recess, in the 14-minute period preceding the regular starting time?

A. Quite—

Mr. Lamb: Objection.

The Master: Overruled. Go ahead.

A. Quite a number of them make their purchases of their supplies before starting time, particularly on the afternoon shift.

Q. Can you state from observation whether any particular amount of time is consumed in that connection?

A. Well, in a case of finishers, they do take quite a little time in purchasing their sponges, due to the fact that a number of them will arrive at the stock room in the same general period, and of course they like to select their own sponges. In the stock room they will have a tray or a cage with quite a number of sponges in it, just as they have come from the bales, and a finisher, when her turn comes after the girl ahead of her has been waited on, she will step up to the cage and paw around among them, pick out one that seems to suit her, and then she will dip it into a pail of water setting alongside the cage, to soak it up to see after it is soaked up if it suits her. She may go through half a dozen of them before she finds one that really suits her, but the choice is hers, so we let her pick out one that suits her and reject as many as she sees fit.

Q. What would you say as to whether or not the employees commence actual work before the established starting time?

A. The general average of employees—

Mr. Lamb: Object to the question. Let the record show an objection.

The Master: On the ground it is too general and has to be limited to a particular time and place?

Mr. Lamb: That is one of the grounds.

The Master: What other grounds?

Mr. Lamb: Materiality.

The Master: Well, I don't see any question of materiality. The other ground, why—I will let him testify this way. I think I permitted it for the plaintiffs and so I will permit it for the defendants.

Mr. Lamb: It is a conclusion.

A. My observation and knowledge of the situation is that the employees do not start work before starting time, and that they frequently start after.

Q. (By Mr. Cooper) Now, you have described the beginning of operations in the morning, Mr. Doll. Now, can you tell the Court what the situation is with reference to quitting time at the end of the day?

A. Well, take, for instance, the piecework department, such as the clay department, and in fact with nearly all piece workers, they try to schedule their work and do schedule their work so that they are on the safe side of the starting time in finishing up. They will not run the risk of carrying over portions of a unit and endeavor to finish up on the basis of a complete unit.

This invariably means that they are through with the units that they have been working on, they are through with the cleaning up incidental to their jobs, making themselves personally in readiness to leave the department, and do many times leave the department before quitting time, stopping at the wash rooms or toilet rooms as they go out, and many times are waiting at the time clock ready to punch out at the earliest possible moment.

Q. Have you had occasion to observe how steady work continues during the day?

Mr. Lamb: Objection.

The Master: Overruled. • • •

A. Piecework employees are not engaged in productive work during the entire established or allowed work period. The big majority of our people are good workers. They are interested in earning, but they do not hesitate to take a few minutes here and there throughout the day to relax from the tension of continuous production.

They, of course, stop production whenever they take

time out to go to a drinking fountain or to go to a wash room or to take a few minutes to perform some incidental function connected with the particular job.

During the course of the work period, employees do go to the stock room, make purchases of supplies. They have knives or individual tools that they have to keep in condition to work, and as long as they show by their general production and attention to the work that they are on the job, that they are trying to produce, that they are interested in producing from their own standpoint as well as ours, we do not object to these minutes that are taken out in the course of the work period.

Q. What is your observation as to how the company's computation of hours worked compares with the actual hours of work?

Mr. Lamb: Objection.

The Master: I think this question is more questionable. I will take his answer.

A. Our study of the situation convinces us that our method of calculating is more than fair to the employee.

* * *

Q. (By Mr. Cooper) Could I ask you whether it is more or less than the amount of time actually worked?

Mr. Lamb: Objection.

A. Our estimate is that the time recorded is more than the time actually spent in production work.

Mr. Lamb: I ask that the answer be stricken.

The Master: I will let that answer stand. I will strike the previous answer about it being more than fair to the employee.

Q. (By Mr. Cooper) In referring to the time recorded, you refer to the hours computation which appears, among other places, on the right-hand column of the time clock?

A. That is correct.

Q. Have you ever heard of any preparatory operations or cleanup operations being performed by an employee either before he rang his time card in the morning, or after he had punched out the time clock at night?

Mr. Lamb: Objection; asking for hearsay. "Has he ever heard of something."

Mr. Cooper: Well, I can ask him whether he knows of it.

The Master: Ask him whether he knows. I will accept the question in the revised form. Do you know of any such?

A. I do not know of any duties that they perform, outside of the incidental personal duties. • • •

Q. (By Mr. Cooper) Do you know of any employee in the glost belt department coming in on a Monday morning to load the saggers and loading saggers before punching in his time card?

A. As to my knowledge, all work is performed after the time clock is punched in and after the regular starting time.

Q. Is the method of paying employees largely on piece rates, more or less peculiar to the Mt. Clemens Pottery Company, or is it common throughout the industry?

A. Piece rate—

Mr. Lamb: Objection.

The Master: Overruled.

A. Piece rate operations are typical and prevail throughout the pottery industry.

Q. (By Mr. Cooper) Could you state briefly, Mr. Doll, just what is meant by the term "piece rate system"?

A. Well, the piece rate system is one in which the employer agrees to pay a given sum for a certain unit or pieces of work, or certain service performed, and which is understood and agreed upon between the employee and the employer, and which has two primary purposes; one, of giving a fixed cost on that item of production, and, on the other hand, given the employee the opportunity through his individual skill and initiative to earn the maximum of his ability.

Q. There has been some reference made during the course of the hearing, Mr. Doll, to an employee punching the time clock, as for example, 10 minutes to 7, and being paid from 7 o'clock. Now, is the piece rate workers paid from 7 o'clock?

A. The piece rate worker is paid for the units of piece work produced.

Q. Is he paid for simply making his services available during certain hours?

A. He is not, because he distinctly differs from an hourly worker. An hourly worker is paid for the time he puts in on the job.

The Master: Of course, where you have a group piece work rate, sometimes the employee may make considerable earnings even if he doesn't turn out much production, may he not?

A. Theoretically that is true, but actually the layout of those group operations makes it practically impossible for a single individual to soldier on the job, because it would so disrupt and retard the operation of the group that even if the employer was willing to put up with it the balance of the workers would not be.

Q. (By Mr. Cooper) Do you have anything to do with fixing the piece rates at the pottery, Mr. Doll?

A. I do.

Q. Can you state whether or not the time which is required to perform an operation is taken into consideration in determining the piece rate?

A. Basically the piece rate is based upon the amount that can be produced in a given length of time, and also means—and also must make allowance for any supplies that the employee would have to acquire in the carrying out of that piece rate. In other words, it must be based upon what is left to the employee after he has put in the time, produced the units, taken care of the incidental duties connected with the job, and provided his supplies.

Q. So that the aggregate piece rate includes not only compensation for services rendered, but compensation for supplies or tools furnished by the employee?

A. It does.

Q. Now, how can the piece worker's rate of pay be measured on a time basis, so far as you can say?

A. Well, it can't be uniformly measured on a time basis when you take into consideration the difference in skill and speed of various operators. In other words, one

operator will produce more per hour in the way of earnings than another operator will.

Q. And will the production of a given operator vary from hour to hour to some extent?

A. It does.

Q. Would it be true, then, that a piece worker's rate of pay doesn't depend on any time basis, but simply on what he produces?

A. The piece worker's rate of pay basically fixed upon a time factor, but, nevertheless, its final result is dependent upon the effort, skill, and industry of the individual worker.

Q. (By Mr. Cooper) Is there any difference between, Mr. Doll, a work week of 40 hours and a work week of 2400 minutes?

A. There is not.

Q. Can you say whether or not—

A. Mr. Cooper, I would like to say in your former question, my answer is based upon that 40 hours of actual working time and 2400 minutes of actual working time are one and the same thing.

Q. Can you say whether or not from the viewpoint of the hourly rate worker and the viewpoint of a piece rate worker, there is any difference between the 40 hour week and the week with 2400 minutes?

A. Fundamentally and actually there is a very great difference.

Q. From your observation, what is it?

A. An hourly worker is paid on the basis of the time that the employer permits him to work, whether or not he performs any services within that period, or the extent to which he applies himself to his particular tasks during that period; whereas, the piece work operator is very largely a working—well, in fact, is exclusively working individually, and while he is working he is producing and earning for himself. Whenever he stops working, he is neither producing for himself or earning for himself.

Q. This may be permitted as an informatory question,

your honor. On your observation, then, Mr. Doll, what is customarily included in the hours of work of a piece worker?

Mr. Lamb: Objection.

The Master: I will take the answer.

A. The hours of work of a piece worker is the time that he actually is engaged in production.

The Master: Do you mean then that from your conception of the definition of hours of work that an employee at your plant who is paid for 40 hours worked under the system that you use, nevertheless actually works much less than that, because of the fact that during a day he takes a few minutes off to go to the toilet or to fix up his tools, or to relax a few minutes?

A. That is correct.

Q. (By Mr. Cooper) What is the general practice in the pottery industry as to the furnishing of such tools as sponges and brushes and the other tools that have been referred to here?

A. Where the company maintains a supply and sells them to the employees, it is industry-wide a custom for the employee to pay for them.

Mr. Lamb: I ask that the last part of the answer be stricken as to the—

The Master: I will let it stand.

Q. How do you determine which items of equipment and tools and materials are to be paid for by the employees and what items are to be paid for by the company?

A. It is based upon established practice in the industry that dates back long before I knew anything about the industry.

The Master: In the case of an employee in the clay shop, let's take a jigger man, for example; he uses a scraper and also a pail, and the finisher that he works with uses a sponge, is that right?

A. Yes.

The Master: And all of those items he is required to buy himself, or was during this period, at least?

A. That is correct.

The Master: He also has some kind of a bench or table in front of him that he works upon?

A. He bears no expense of the installation or maintenance of equipment.

The Master: Are there any other movable items of equipment that he uses in his work, that the company pays for and that he isn't required to pay for?

A. I can not recall anything that the clay shop workers, in connection with the jiggering operations, purchase except sponges, pails, scrapers and occasional finger cots.

The Master: Are there any movable items of equipment that the company pays for that he uses?

A. All movable items—all movable and stationary items of equipment other than these incidental tools that I have spoken of are the property—supplied and the property of the company.

The Master: What other items does the jigger man use in his operation?

A. Well, the jigger man doesn't—he uses his machine, he uses his jigger.

The Master: That is quite an elaborate machine?

A. Well, that is a power-operated machine. The machine, the belts that go with it, the motors that drive it, that is all, of course, furnished by the company. The batting-out equipment which we use in our shop, which is far superior to anything used in the other shop because of its taking so much labor off of the batter-out, is electrically operated as against a hand operation in the other factories, but we don't charge any of that expense against the batter-out.

There is the dryer that goes with the jigger man's operation, commonly referred to as a mangle. That, of course, he has nothing to do with the installation or the maintenance of. The finisher utilizes a tool known as a finishing tool, which is supplied by the company.

The Master: What kind of a tool is that?

A. The finishing tool is a very light, small instrument in which we have a very minute carboloy tip in it, on the

end of a piece of spring steel, and she uses that to smooth off the edges of a piece of ware while they are revolving around on a wheel.

The Master: Roughly, how much does that tool cost?

A. That particular one?

The Master: Yes.

A. That particular one costs about 75 cents apiece.

The Master: Are those tools being lost and mislaid fairly frequently?

A. Well, some of them do disappear, but we don't have, in the case of these particular tools, so much trouble, because they are a type of thing peculiar to our own operation, and there would really be no incentive for anyone to—

The Master (interposing): They don't use those in other potteries?

A. They do not.

The Master: Is that the reason why you make the distinction between that tool and the scraper that the jigger man uses, as to who is to pay for it?

A. There is, your honor. In the other potteries the finishers use a different type of tool which is purchased by the jigger man and supplied to the finisher. It is simply a piece of metal of a certain shape, made of soft steel, and a finisher has to stop her work repeatedly during the course of the day and file that edge sharp. Now, what we did for them when we developed this tool that we use and which we furnish to them without charge, because we make them up ourselves, we developed this carboloy point which enables a girl to work day after day without having to sharpen that point at all. And these points do require some attention. They return them to the filing room at intervals and sooner than have them their property we have retained title to them ourselves and supply them to them without charge.

The Master: Why is it that the jigger man paid for the finishers' sponge and tool before you developed this particular tool?

A. Strange as it may seem, this particular industry is a victim of some old English customs—I don't know how far back they go—that were imported to the United States with the original English potters that came over here in the early 1800's and built and put into operation the first potteries. Those old English customs were followed here. They were vastly different than the American customs, but up until within recent years it was universal, and it still exists in some of the potteries, the jigger man was permitted by the company to even hire his batter-out and his mold-runner and his finisher. He paid them out of his own wages practically whatever he got ready to pay them. He hired for whatever he could get them for and paid them. The company paid him for the entire operation and, consequently, all these tools were charged to him and he bore them—took them out of his money.

So that we have corrected a great many of those old customs as times went on that existed in the other potteries, and to a certain extent existed in our plant many years ago, but there are a few of them that—perhaps that is about the last one that was hanging around that needed correction that hadn't been put on a more business-like basis.

The Master: In your plant are the employees largely recruited from men and women that had previous experience in the pottery business, or are they largely working men who have come to your plant and learned the pottery methods in your plant for the first time?

A. Our organization is practically 100 per cent made up of people that we have trained and developed ourselves.

The Master: I am just wondering, apart from the issues in the case, as to why you don't simply cut through all this question of deductions for items of personal equipment used—equipment and tools used by the employees in the business and have the plant furnish them, with the employees being paid an adjusted rate, what-

ever is fair, but so that what they receive is the net amount they receive instead of having them receive a certain amount with deductions therefrom?

A. Your Honor, the answer to that is very simple. There is no way of controlling the wastage of these things by putting them on a basis wherein they were furnished to them free, even if there was an adjustment in the wage to take care of it.

I can best illustrate that for your personal information by citing this, that last March when we decided to readjust rates so as to provide for the finisher buying her own sponges instead of the jigger man furnishing to her, as soon as that went into effect the finishers used 50 per cent less sponges than what they had been using when the other fellow was paying for them.

The Master: Go ahead.

Q. (By Mr. Cooper) Showing you Exhibit 2, Mr. Doll, which has already been identified as an annual earnings card of Steve Anderson, is that the regular form of annual earnings card which you have for all of the employees (handing exhibit to the witness)?

A. A record of this kind is kept for each individual employee for a year at a time.

Q. Is there a column on that and the other individual earnings records headed "Gross Pay"?

A. There is.

Q. Are any deductions made from any worker's gross pay for the price of materials furnished by the worker?

A. The gross pay represents the amount left after the purchases have been deducted.

Q. I am not sure whether you have been asked about this before, whether or not in fixing a piece rate there is taken into consideration the amount of supplies which have to be used in connection with the particular operation?

Mr. Lamb: Objection.

The Master: Overruled.

A. In fixing a piece rate all factors are taken into

consideration that have anything to do with what will be finally left to the employee as representing a fair rate of pay. • • •

Q. (By Mr. Cooper) And whether or not the cost of any supplies purchased by an employee is taken off before his gross pay is computed and entered on the records?

A. Any deductions for supplies purchased have been taken out before the amount is shown on the yearly earnings card under the heading of gross pay.

Q. Where do the employees of the pottery buy these various supplies?

A. Some of them buy them on the outside; a big majority of them buy them from the company stockroom.

Q. If they do buy them elsewhere, is any kind of a deduction charge made by the company?

A. None whatever.

Q. Are you able to state of your own knowledge why most of the employees buy these items from the company's stockroom?

Mr. Lamb: Objection. He isn't qualified to answer that. • • •

The Master: This question now is as to whether the witness is able to state whether or not he knows, and I will get the witness' answer yes or no to that as to whether he knows. Then I will take the objection into consideration on the next question.

A. I know why they buy them from our storeroom.

The Master: How do you know?

A. I know it for two reasons: One is that they can't buy the same items for the same money from a store, and, secondly, because employees have told me the comparison of values when they have attempted to buy them from stores. • • •

Q. (By Mr. Cooper) Can you state, Mr. Doll, what are the comparative costs of items of supplies which you have been referring to as bought in the company's stockroom and when bought at outside stores?

Mr. Lamb: May I state my objection before he answers that question?

The Master: Yes.

Mr. Lamb: Obviously this witness will make a self-serving declaration and, of course, he sells in his company's store goods at less than the Kresge outside store might sell to these same employees, and I think the proper way of proving that is not by hearsay as to what he hears that some employees, someone else may say or buy at an outside store, as compared with the price he charges in his own store. • • •

The Master: He may answer the question.

A. I can recall in the case of some canvas gloves that I previously testified to in this hearing, we are supplying to employees at 12 cents. Those same gloves can not be purchased at retail for less than 15 cents. On other types of gloves— • • •

A. I was about to refer to sheepswool sponges which we have been for the last couple of years supplying to employees at actually less than what they cost us, because the price of sheepswool sponges went so high that we couldn't even ask them to pay what they cost. As an illustration, we have been—up until about 6 months ago we were selling sheepswool sponges to the employees at 35 cents, that were costing us 60 cents each.

The Master: You mean 60 cents each out of pocket, or do you include overhead in that?

A. They cost 60 cents each at the fisheries in Florida. • • •

A. Since that time we have been charging them 40 cents for these sponges, and they have been costing us from 75 to 82 cents apiece. • • •

Q. (By Mr. Cooper) What are some of these items of supplies handled in the company's stockroom, Mr. Doll?

Mr. Lamb: You mean that are sold to employees?

Mr. Cooper: Yes.

A. Well, they are canvas gloves, sponges, finger cots,

some small camel's hair brushes that are used by liners, decalcomania rubbing brushes, decalcomania size brushes, pails. I think I have named all that amount to anything.

Q. Now, in connection with such matters as gloves, or finger cots, or brushes, or pails, does an employee have occasion to purchase those quite frequently, or rather infrequently as compared with sponges?

A. Everything except sponges are very trivial items, both from the standpoint of the individual employee and from the standpoint of the aggregate.

Q. Outside of sponges would you have any idea as to the total cost to the employees of the other items sold?

A. Aside from sponges it wouldn't amount to $1,000 a year.

The Master: You mean all the employees in the entire plant?

A. Yes, sir, with the exception of sponges.

Q. (By Mr. Cooper) And that would be approximately how many employees?

A. Well, at the period of which we are talking it would be in the neighborhood of close to a thousand production employees. Of course, understand there were many, many employees that do not buy anything at all.

Q. By the way, have you ever made any attempt to change the practice as to the furnishing of supplies?

A. Ask that again, please.

Q. Have you ever made any attempt to change the practice which you have described as to the employees obtaining their items of supplies?

A. Yes, we have frequently endeavored to get the local merchants to go into the kind of these supply item more extensively, and I personally suggested at one time to both the keeper of a small store across from the pottery who sells miscellaneous supplies and to the proprietor of a gas station across from the plant who also sells miscellaneous supplies in conjunction with his gas business; I have personally asked them to put in a line of these items, and see whether they could take over the

business and make anything out of it. Both of these chaps took the matter under advisement, and afterwards, reported to me that there were two reasons why they wouldn't go into it; one was that the volume wouldn't justify, and the second was the employees were so accustomed to buying these things within a certain price range that they could not possibly sell them at anywheres near those prices, and make anything that would justify them in the investment.

(Whereupon a document was marked as Exhibit No. 78.)

Mr. Cooper: If the Court please, the document which I am holding that has been marked Exhibit 78 for identification, is a table which was prepared pursuant to your Honor's suggestion at the hearings last February, showing the total amount of the supplies purchased by one of the employees, to-wit, Dorothy May. There was some discussion by us about Dorothy May's deductions, and it was your Honor's suggestion that we go through all of the several compilations and show the total cost over the entire period involved from October 25, 1938, to April 22, 1941. We will have in court before we are done here, the individual who made the compilation. This is simply a summary of what appears from the books which have already been marked, and I should like to offer it at this time on the basis I have outlined as being a summary taken from the books, as your Honor suggested, and we can bring in later, if it becomes necessary, the person who checked through it. • • •

The Master: Then I will let you use it as though it were in evidence and withhold a ruling on its admissibility until such time as it is identified by the employee who prepared it.

Q. (By Mr. Cooper) Exhibit 78, Mr. Doll, shows that over a period from October 25, 1938, through April 22, 1941, the cost to Dorothy May of supplies purchased by her from the company amounted to a total of $6.34. Are you able to state whether or not that is about a typical instance of the aggregate cost of supplies to an employee?

A. This would be a typical instance of the cost of supplies to a person doing the work that Miss May is doing.

The Master: Was she in the decalcomania department?

A. She was a liner.

Mr. Lamb: Does she buy sponges?

A. I don't think she would buy any sponges. It was probably lining-brushes.

Q. (By Mr. Cooper) The girls who did buy sponges worked at higher rates, too, did they not?

Mr. Lamb: Objection. Higher rates than what? • • •

The Master: I will take his answer.

A. As I previously testified, the rates are set with due allowances for the amount of supplies the people who have to purchase in the particular line of work in which they are engaged.

Q. (By Mr. Cooper) Are piece rate workers in the pottery industry paid their piece rates for pieces if they spoil them and which cannot be used?

A. No, they are paid only for the good pieces.

Q. Are you speaking of the Mt. Clemens Pottery particularly, or of the pottery industry in general?

A. I am speaking of the industry in general.

Q. What is the customary practice in the industry as to such items as crooked ware, bisque-grinding, wheeling out molds? Perhaps I should take them one at a time.

A. Which one are you taking first?

Q. Let's take this matter of bisque-grinding.

A. Bisque-grinding is a defect that has been left on a piece of ware by the finisher after she has completed her work on that piece of ware and which she should have removed. After that ware comes through the fired stage if it is necessary to set such pieces out and grind off the defects; part of the expense of that is charged back against that crew.

Q. What type of worker is it who is charged with responsibility for the situation that necessitates bisque-grinding?

A. It becomes a joint responsibility of the jigger man and the finisher.

Q. Do jigger men and finishers ever do their own bisque-grinding?

A. They have done in days gone by. They don't do it now. We stopped having them do it at their own request.

The Master: When did you stop that?

A. That dates back quite some few years ago and was based upon requests from these workers that they could save money by having these defects ground off for them than to lose the higher earning rate that they could maintain by not doing it themselves. • • •

Q. (By Mr. Cooper) As to the bisque grinding, as I understand it, the custom of the industry was that the jigger man would do his own bisque grinding?

A. That is right.

Q. Now, does the operation of bisque grinding require a greater or less degree of skill than the operation of jigger man?

A. Oh, far less skill.

Q. What does that mean with reference to the wage expense of getting the bisque grinding done?

A. Well, what we finally may charge back to the jigger man and the finisher wouldn't represent 25 per cent of what they can earn in the meantime by not doing that operation.

The Master: You mean their wages are four times as high as the wages of those that are doing the bisque grinding?

A. No, I didn't say that. I said we did not charge back to them the expense of all that operation. We only charge back to them about 50 per cent of it.

Q. (By Mr. Cooper) What has been the customary practice in the industry as to sorting out crooked ware?

A. None of the companies pay for ware that they discover to be defective in the clay state. Crooked ware is easily discerned in the clay state because the pieces are stacked one on top of the other, and if there are crooked pieces in there as a result of improper making, they can be seen. And, it is necessary for either the crew to take those pieces out themselves or to have somebody do it for

them, because they are not accepted by the company. • • •

Q. And what has been the customary practice as to who inspects and sorts out the crooked ware?

A. Well, formerly when there was crooked ware among a crew's production, the foreman would notify them to go over their ware and get those defective pieces out, but, of course, they would have to do that on their own time, and that would take away from their productive time.

Q. The crew in that case would be the jigger man and batter out?

A. The jigger man, batter out and finisher would all take part.

The Master: They would then re-mold it and then send it back?

A. No, it has to be broken up then.

Q. (By Mr. Cooper) Has there been any change in that customary practice at the Mt. Clemens Pottery Company?

A. Again at the request of these people, and by mutually satisfactory arrangement, girls were provided to do this particular work when necessary.

Now, of course, understand this, that this is—we are talking about exceptions to the rule, not the rule, as to these particular things that happened. They are very minor items and very minor instances. But, where they do come up a girl is provided who performs this operation for these people. They pay for the expense of the girl to do that work for them, and they in the meantime continue with their production and profit by what they would have otherwise have lost by not being able to produce.

The Master: The ware that in this clay state which is not correctly formed, and has to be destroyed, you don't pay the particular crew for that ware, do you?

A. We do not.

The Master: And do you charge it back to the particular crew or do you charge it back to all of the crews?

A. No. We charge it back to the individual crew that made it.

The Master: Now, the cost of these girls that inspect

the ware is charged back uniformly or pro rata to all of the crews in the department, or will her wage rate be charged back to particular crews?

A. The time that she spent on that individual inspection is charged back against that particular crew whose work she was looking over.

The Master: In other words, a record is kept of the amount of time she spends in inspecting a particular crew's work?

A. That is right.

The Master: And if it takes her longer to inspect one crew's work than another crew's work, the crew with which she took the most time will have a larger deduction than the other crew?

A. That is right, and many days go by when you don't have to call her into service at all.

The Master: She is paid on an hourly basis?

A. She is paid on an hourly basis.

Q. (By Mr. Cooper) There has also, I think, been some mention made of a deduction for wheeling out molds. Can you tell the Court what the situation is as to that, Mr. Doll?

A. In the course of a day's operation or in the course of a few days' operation, depending upon the man, a jigger man or his batter out will drop or chip or bump or something of that kind, some of their molds causing them to be defective. They accumulate those few pieces, as again it is a very small amount, and there is not much of it has to be done, because we couldn't afford to have much of it done, we couldn't let a man be that careless, but they accumulate a few of these damaged molds, and maybe once a week or twice a week, as the case might be, why, a laborer will come around and clean up a man's bench for him and take those pieces out to the dump. That again is an operation belonging to the jigger man crew, but quite a while back at their request, the practice was established of having a laborer do this work for them, so that they could continue with their work and also because of the fact that particularly in the winter weather

they would prefer not to have to go outdoors after being used to the warmth of the department.

(Whereupon a document was marked Exhibit 79, by the reporter.)

Q. (By Mr. Cooper) I hand you, Mr. Doll, Exhibit 79 for identification, and ask you what it is?

A. Exhibit No. 79 is the yearly earnings card of Barbara Bowling for the portion of the year 1940, in which she worked.

Q. When was she hired?

A. The first pay that she drew was the pay of July 23, 1940.

Q. At what rate was she paid at that time?

A. Her first two pays show that she was paid at a rate of 30 cents an hour.

Q. What is the meaning of the higher hourly rates received on Exhibit 79 by the later weeks?

A. The record here shows that during the balance of that six months' period, her rates continued to advance until they reached 50 cents an hour, is the highest one shown, and that indicates that she had begun to produce in excess of her minimum rate. That is that the piece work she performed when figured at the piece work rates amounted to more than her 30 cents an hour, and consequently she was paid the higher amount.

Q. How was the 30 cents an hour arrived at, Mr. Doll?

A. The 30 cents an hour represents the legal minimum, and on those two particular pays in which she was paid 30 cents an hour, it means that she either earned 30 cents an hour, as is most likely the case, she earned less than her 30 cents when figured at piece work, and the difference was made up to bring her to the statutory minimum.

Q. After a worker gets on what you describe as the piece rate basis, do their rates as it is listed on the annual earnings card vary up and down?

A. It does.

Q. By the way, when is that rate computation arrived at?

A. The rate computation of the average that the employee earns per hour is arrived at by dividing the gross pay by the hours worked.

Q. How low might that rate fall for a worker?

A. Well, it could fall down to zero, but we would still have to pay the party the minimum 30 cents an hour if we kept her in our employ.

Q. Is there a guaranteed minimum of 30 cents an hour which all the employees get regardless of their production?

A. There is. * * *

Q. (By Mr. Cooper) By the way, what time is shown in the column "Hours worked"?

A. The time shown in the hours worked is the company's calculation as to the maximum time that the employee could have worked on that particular pay.

Q. Now, does this system as you have described it, apply only to this Barbara Bowling, or is it the same for all of the employees?

A. It is the same for all of the employees.

Q. What is the apprentice system in use in other potteries, if you know, Mr. Doll?

Mr. Lamb: Objection. The part about the apprentice system in other potteries is immaterial.

The Master: I will take the answer.

A. The potteries that we previously referred to as operating under the agreements of the National Brotherhood of Operative Potters have definite apprenticeship scales in their departments.

Mr. Lamb: May I state my objection now, and state that this company is not a party to the agreement he is discussing.

The Master: Yes, but I will take the testimony on the ground that although he may not be a party to it, he may be familiar with the conditions in other potteries.

A. And they have definite apprenticeship scales whereby the various trades in the potteries work at apprentice discounts for from periods of 3 to 5 years at specified discounts

from the established rates, the savings in the difference in the rate going to the company during the apprenticeship periods.

Q. (By Mr. Cooper) How does that system compare, Mr. Doll, with the way that learners and beginners are treated in the matter of their compensation at the Mt. Clemens Pottery Company?

A. We do not have the apprenticeship system and operate on the basis that people get full rate as soon as their earning rate exceeds the minimum.

Q. By the way, are their certain items in use in the plant known as ware carriers or trucks?

A. There are quite a variety of different types of trucks and ware carrying conveyances.

Q. About how much do they cost?

A. Well, they are in the form of an ordinary wooden bin mounted on rubber-tired casters, from about $50 apiece up to lift trucks running four to five hundred dollars apiece.

Q. What type of employees use those trucks?

A. They are used in all departments of the plant.

Q. That is, they would be used, for example, by jigger men and by batter outs, by finishers, or are there other particular employee groups?

A. All departments use them in one form or another.

Q. But are they used by all the employees in all the departments?

A. No, not used by all employees in the same department, but they are used in conjunction with the production of that department. They are generally specified employees that do the trucking.

Q. Are they generally among the more skilled or the less skilled employees who do the trucking?

A. The trucking is generally done by the less skilled people.

Q. Are these people who do the trucking required to furnish their own ware carriers or trucks?

A. They are not.

Q. No deductions from wages for those?

A. Never heard of such a thing.

The Master: Are they paid on a straight hourly rate?

A. No. There may be some of them paid on an hourly rate, but they are more apt to be on the piece work system.

Mr. Cooper: I offer Exhibit 79 in evidence, the annual earnings card of Barbara Boeling (handing exhibit to Mr. Lamb). • • •

The Master: I will admit the exhibit.

Mr. Cooper: Mark these, please.

(Four documents referring to Arthur Sibbi were marked Defendant's Exhibits 80, 80-A, 80-B and 80-C.)

Q. I hand you, Mr. Doll, what has been marked for identification as Exhibit 80, 80-A, 80-B and 80-C, and ask you to describe the sheets appearing there (handing exhibits to witness)?

A. Exhibit 80 is a photostatic copy of the time card of Arthur Sibbi for the pay ending March 25, 1941.

Q. And Exhibit 80-A is what?

A. Exhibit 80-A is a copy of the work sheet of Arthur Sibbi for the pay ending March 25, 1941.

Q. That 80-A is an excerpt from the particular pay sheet which ties in with time card, Exhibit 80?

A. It is for the exact same pay and period.

Q. Do you know whether or not this Exhibit 80-A is a true copy from a particular sheet in your original records which has already been marked as an exhibit here?

A. It is a true copy. • • •

Q. (By Mr. Cooper) And what is Exhibit 80-B for identification, Mr. Doll?

A. Exhibit 80-B is the identification slip which Arthur

Sibbi signed at the time he drew his check for the pay ending March 25, 1941.

Q. Can you state whether or not during the period involved, such a slip was signed by each employee as he received his pay check?

A. It is signed by each employee as he receives his pay check as identification to be handed to the pay master before he can receive his check.

Mr. Lamb: Is that a photostat?

Mr. Cooper: Yes, sir.

Q. And, Mr. Doll, Exhibit 80-C is what?

A. Exhibit 80-C is Arthur Sibbi's annual earnings record for the period from January 1, 1941, until the last day he drew on March 25, 1941.

Q. Can you state whether or not that is the original from the company's record or a verified copy of his 1941 earnings card through the period of May 25th?

A. This is a verified copy.

Q. Have you verified that one?

A. I did.

Q. Can you state briefly, Mr. Doll, the use to which these documents are put in the record keeping system of the Mt. Clemens Pottery Company?

A. Well, as I previously testified; the time card is a record of attendance, and a record for the employee as to the number of hours charged by the company, as to the time he actually worked on each individual day.

Q. Could you state the practice of the company with reference to the time when the numerals in the right-hand column of the time clock cards are inserted?

A. Each morning on the time cards, all the time cards are removed from the racks. After the people have punched in, the entries as to time actually worked are

put on the cards in the right-hand column. The cards are then put back into the racks where at the next ring, the hours charged are shown for the information of the employee who is using that particular card.

Q. And at what time, with reference to that does the record appear on the compilation sheets as to the number of hours worked?

Pardon me, sir, I may have confused the record in referring to Exhibit 80-A as the compilation sheet. Is that the term you used?

A. These are our work sheets.

Q. Work sheets?

A. At the time the hours charged up as actually worked, are entered on the time cards, they are entered on to the individual work sheet of the employee, the daily entry.

Q. And is the amount—let me strike that, please. Is the determination of an amount of an employee's wages made on the work sheet?

A. The calculation as to the amount earned, is shown on the work sheet.

Q. And are employees paid by check or in cash?

A. They are paid by check.

Q. What day is pay day, by the way, sir?

A. We ordinarily pay on Fridays.

Q. And what is the work week?

A. The work week is customarily from Tuesday—from Wednesday morning until Tuesday evening.

Q. Is that true in all the departments?

A. There is one exception. That is, that the decorating department runs their week from Tuesday morning until Monday evening.

Q. And at what stage in the process are the wage

identification slips used, such as illustrated by Exhibit 80-B?

A. When the payroll is made up and the checks are arranged for distribution, we then run, at that time run these wage identification slips through the addressograph, putting on each one the name, the social security number, the clock number, and the date of the pay. When time comes to distribute the checks, the foreman or the superintendent, as the case may be, generally it is the superintendent with the foreman as his assistant, distribute these identification slips to the proper employees. The employees then form in line, and as they go by the pay window and present this identification slip, the paymaster issues to the party the check that has been made out for that particular person. He must sign the identification slip, however, before he presents it.

Q. And then finally you have an annual earnings card for each employee?

A. Yes.

Q. And what is its function?

A. Exhibit 80-C? Is that—are you referring to this one or to the general principle?

Q. To Exhibit 80-C, as an example of the individual earnings record?

A. 80-C is a yearly earnings card, is the card that is kept for the entire year. Upon which is recorded the hours worked, the gross pay, the social security deductions, and insurance deduction, if the employee is carrying group insurance. It also shows under the column headed "Rate," it shows what the employee averaged per hour for any particular pay by dividing the amount of money he drew by the hours worked.

Q. Whether or not the work sheets are bound into book

form and become a part of the permanent records of the company?

A. How is that?

Q. I asked you, Mr. Doll, whether or not the documents which you have described as work sheets are bound into book form and kept as a part of the permanent records of the company?

A. They are.

Q. In summary, then, you have in your records, time clock cards, these books of work sheets, the wage identification slips and the annual earnings cards, is that correct?

A. Also the cancelled checks.

Q. (By Mr. Cooper) Let me ask you first, which of these documents, Mr. Doll, is the record of the hours worked per day and week and the pay received by each employee?

A. Well, the work sheet is the most detailed record.

Q. And how far back do your work sheets go?

A. Our work sheets go back to the year 1934.

Q. Do the records in those work sheet books reflect the name of the employees?

A. They do.

Q. And the day when the work week begins?

A. Yes.

Q. The occupation of the employee?

A. Yes.

Q. Does it show the basis upon which his wages are paid?

A. It does.

Q. Does it show the number of hours worked each day and each week?

A. It does.

Q. Does it show overtime payments?

A. It does.

Q. Does it show additions and deductions from wages, if any?

A. That is correct.

Q. The total wages paid?

A. It shows the total wages paid, with the exception of deductions for social security and insurance.

Q. Does it indicate the pay period covered by the payment?

A. It does.

Q. And those books are a part of the permanent records of the company?

A. They are.

Q. You have them available back to what year, did you say?

A. 1934.

Q. Now, has it been the custom of the company to preserve permanently the other sorts of documents which are used in connection with your general record keeping system?

A. We had never preserved our time cards for any very lengthy period, that is, in a period of years. It had never been the company practice. The work sheets are preserved for quite a few years in bound form. The identification slips are not retained for any length of time, as they have served their purpose; and the annual earnings cards are a permanent record ever since this system has been in use.

Q. Mr. Doll, do you recall whether or not the wage and hour division of the United States Department of Labor inspected the Mt. Clemens Pottery Company plant in 1939?

A. The Wage and Hour Division had two inspectors at our plant for approximately four weeks in 1939.

Q. Do you recall the month now?

A. Part of October and November, as I recall.

Q. So far as you observed and participated in this inspection, please describe to the Court what happened?

(Objection overruled.) • • •

A. When the first inspector called upon us, we, of course, very cheerfully submitted to him all our records in order to make sure that he had clear insight into everything, in order to make sure that he was entirely conversant with the fact that we were entirely satisfied to have him there, at least to have him there, and I personally made sure he had every facility afforded him to make any kind of an examination or determination he cared to.

There was no feature regarding our payroll system, our method of computing, our recording, or paying, but what they went into very thoroughly, and with plenty of time to study it and know exactly what they were doing.

In addition to that, towards the conclusion of the inspection, one of the inspectors came to me personally and he said, "Now, Mr. Doll," he says,—

(Objection overruled.) • • •

A. Mr. Rifan came to me, and he said, "Mr. Doll," he said, "one of the routine parts of our inspection is to talk to the employees. Now," he said, "I can either talk to them here or I can talk to them in their homes."

He said, "Of course, it would save me quite a great deal of work if I could talk to them right in the shop."

I said, "That is entirely satisfactory to us, Mr. Rifan. How do you want to do it?"

"Well," he said, "I would like to go through the plant and talk to them at will without anybody else being present."

I said, "That is all right." I said, "I will provide you with a guide who will go through with you. You can point out any man or woman in the plant you want to talk to, and say that is a party I want to talk to, your

guide will introduce you to the employee, and leave the place where you are talking to them and not come back to you until you are ready for him to take you to another employee."

Mr. Rifan spent quite an amount of time in going through the plant from one end to the other, and as the party whom he accompanied told me afterwards, he interviewed about 30 employees scattered throughout the plant. We were also told that the completeness and the detail with which our records are kept was very much to be complimented.

The Master: Will you name the individual who told you that?

A. Mr. Rifan.

The Master: And the place and the parties present and the time as best you can recall the conversation.

A. I do not recall whether there was anybody else present at the time he made this statement, but he said he found them much more complete and much more in detail than what they found in their other inspections.

Q. (By Mr. Cooper) What was the result of that inspection, Mr. Doll?

A. The result of that inspection was that the wage and hour department discovered one error in our method of calculating, and that was that we had during the first year—

Mr. Lamb (Interposing): Is this conversation that occurred when someone was present? • • •

The Master: Well, again, when you are giving a conversation, you will have to give the name of the person and the time and place and who was present as best you recall it.

A. Mr. Rifan was the party that was again talking to me on this particular error that he found, and it was during this 4 weeks period in the fall of 1939.

The Master: Now state what he told you, to the best of your recollection.

A. He told us that the plan that we had been using

of, during the year that the workweek was 44 hours per week, that the plan we had been using of averaging the pay period or the two weeks' period and not paying overtime unless it was in excess of 88 hours was incorrect, that we should have dealt with each individual week individually on a 44-hour week basis. He convinced us that we had been in error in that particular thing, and after he did so, we told him that we were very glad to correct the matter, and proceeded to do so. * * *

A. We had thought we were entirely right in averaging the two weeks, and we had done a great deal of that averaging of the two weeks at the request and for the accommodation of the employees who would find it more convenient.

(Objection.) * * *

The Master: I think you better make that the subject of another question. The question that was asked now was as to the result of the Wage and Hour Division investigation, and this is why you want to go into it, into the history of why it was established, make that a separate question, and then it can be objected to as a separate question and ruled on as a separate question. Don't now testify as to the history back of the establishment of that, but just tell what happened with respect to the Wage and Hour Administrator's investigation.

A. I think I can complete that part of it by stating that when Mr. Rifan convinced us we would be wrong on the matter, we promptly said we would be very glad to rectify it.

Q. (By Mr. Cooper) And how was it rectified?

A. It was rectified by going back over the records, picking up the items wherein an individual week had exceeded the 44 hours, even though the 2 weeks had not exceeded 88, and paid the time and a half to the employees for that period.

(Whereupon documents were marked Exhibits No. 81-A through J by the reporter.)

Q. (By Mr. Cooper) Can you say, Mr. Doll, whether

or not Exhibit 29 is the complete list of the employees whom payments were made at the time of this inspection?

Mr. Lamb: I think there was an objection to that before.

Mr. Cooper: That exhibit has been received. • • •

The Master: Exhibit 81-A is just one sheet here. It is 81-A through 81-J. Exhibit 29 consists of a number of sheets, Exhibit 29 through Exhibit 29-M.

What is the difference between Exhibit 81 and the subdivisions of that exhibit, and Exhibit 29?

A. The difference is—the two groups are exactly the same thing. The difference is that Exhibit 29 through Exhibit 29-M are the people who were paid in separate checks. It was understood and agreed that the small amounts less than $1 could be added on to the current pay at the time the settlement was made. That is a different group here (indicating).

The Master: By "this group here," you are referring to Exhibit 81 and its subdivisions?

A. That is right.

Q. (By Mr. Cooper) I ask you whether or not that was in fact done with reference to the individuals whose names appear on Exhibit 81 and its subdivisions?

A. It was. • • •

Q. (By Mr. Cooper) What record, if any, Mr. Doll, was made of the payments made to the employees whose names appear on 81 and its several parts? • • •

The Master: What did the Wage and Hour Division have to do, if anything, with the form of these records?

A. After we were in agreement as to the point that they had raised, they authorized us to go through the records, make the corrections in accordance with the 44-hour week, which we did, and presented it to them for their verification, if they so wanted, and they accepted our calculations without a further audit.

Mr. Cooper: I offer Exhibit 81-A in evidence, your Honor.

The Master: I think I will take that under advisement until I find out just what disposition was made of Exhibit 29. • • •

Q. (By Mr. Cooper) On what basis were the computations made which appear on Exhibits 29 and 81?

A. They were made on the basis that wherever an individual week exceeded 44 hours, that the excess number of hours were to be paid for at time and a half. • • •

Q. Whether or not that was in accordance with your instructions which you received from the Wage and Hour Division?

Mr. Lamb: Objection. That is the very thing, as I understand it, that has been ruled out.

The Master: I think he has already so stated. It is just repetition. I will sustain the objection.

Mr. Cooper: If that appears, that is all I wanted to make sure of. • • •

Q. (By Mr. Cooper) Was any request made by the Wage and Hour Division as to a change in the system of computing the hours of work?

Mr. Lamb: Objection. That is highly immaterial.

The Master: I will take the answer to that.

A. There was not.

Mr. Lamb: I ask that the answer be stricken.

Q. (By Mr. Cooper) Can you state, Mr. Doll, why the individuals listed on Exhibit 29 appear to have affixed their signatures to the exhibits and the contrary appears to be true as to the individuals listed in Exhibit 81?

A. The ones that were paid by check signed these receipt blanks. The ones that had the amounts less than $1 added into the current pay, simply signed for the check for that particular pay without any particular reference to the amount added.

Q. Do you happen to recall, Mr. Doll, the total of all the various items listed on these two exhibits?

A. Approximately $1300.

Q. By the way, going back to a thing that was up a minute or two ago, can you state, Mr. Doll, why all, or

on what basis prior to the time of this inspection by the Wage and Hour Division overtime had been computed on a two-week basis?

Mr. Lamb: Objection. • • •

A. The principal reason for it and the individual cases in which we incurred the largest amount of overtime was where we had, at the request of and for the convenience of the employees, permitted them to work a longer week one time and a shorter week the other.

Mr. Lamb: I ask that the answer be stricken.

A. This was particularly true where the employees tried to lengthen out the week-end.

Mr. Lamb: I ask that the answer be stricken. • • •

Mr. Cooper: I offer in evidence, if the Court please, Exhibit 80 to 80-C. • • •

The Master: In view of the fact that an objection has been made, I will admit photostatic copies in place of the originals, Exhibit 80 and Exhibit 80-B, but I will direct you to produce photostatic copies of the others if you want to get those in evidence. • • •

Mr. Nunneley: For the purpose of examination and cross-examination, may they be used, with the understanding that a photostat will be substituted?

The Master: All right, you may do that. • • •

Q. (By Mr. Cooper) There has been some mention, Mr. Doll, some reference to the 51-52-53 plan. What was that?

A. The 51-52-53 plan is a plan by which during a period of 52 weeks of the year, we pay compensation to the employees equivalent to 53 weeks wages for 51 weeks work.

Q. Was there any agreement pursuant to which those two weeks' extra wages were paid?

A. There is none.

Q. By the way, did you personally enjoy the benefits of that plan, Mr. Doll?

A. I did not; the only employee who did not benefit.

• • •

Q. (By Mr. Cooper) What are the normal or regular number of hours of work per week in the Mt. Clemens Pottery during the period involved in this suit?

A. Well, the basic work period was 44 hours for the period from October, 1938, to October, 1939; 42 hours from October, 1939, to October, 1940, and 40 hours from then on.

Q. Did you have foremen's meetings held regularly in the pottery company, Mr. Doll?

A. We did.

Q. How often were they held?

A. Every Tuesday noon.

Q. And who attended?

A. All the foremen, department heads, officials and the office manager.

Q. Was there any discussion at those meetings as to the Wage and Hour law?

A. There were.

Q. Whether or not you issued any instructions to the foremen at those meetings with reference to the Wage and Hour Law?

A. As we approached each period of the change in the law, the supervisory staff was thoroughly instructed as to what was required by the law that we were to live up to it, and that people upon permission, employees were not to be permitted to work overtime.

Q. Have there been instances where upon permission employees have worked overtime?

A. Yes, quite frequently.

Q. Do you have any idea how many on the average instances of overtime work occur in the week?

A. Well, there were overtime payments made every pay. I wouldn't, of course, be familiar with all the isolated instances except for the fact that one of the regulations of our office is that they make a complete list of the overtime payments at the end of each pay by name and the number of hours overtime, and the amount paid out. One of those copies comes to my desk, and keeps

me familiar with the extent to which overtime is being worked and paid for.

The Master: You stated that employees must get permission before working overtime. Who do they obtain that permission from?

A. From the foreman, permission or authorization from him.

Q. (By Mr. Cooper) What would there be, one or ten or twenty employees who normally in the course of a pay will have received permission and worked overtime?

A. I would say that during the period referred to in this action, that there would probably be overtime from the standpoint of individuals, would probably vary from ten to twenty per pay.

The Master: That is for the entire plant?

A. That is correct.

The Master: And including both hourly workers and rate workers?

A. That is right. I am referring to the factory end of the plant.

Q. (By Mr. Cooper) By the way, was anyone ever laid off or fired for working overtime?

A. We have never had such a case.

Q. There has been considerable talk during the hearings here about a first strike and a second strike. Can you fix the dates, Mr. Doll?

A. The first strike began on April 14, 1941, and the second strike began on November 24, 1941.

Q. Did any of the demands made by the strikers at the time of either of those strikes relate in any way to the method of computing hours worked?

Mr. Lamb: Objection.

The Master: Well, first, were there any demands made to you by the strikers?

A. There were no demands made of any kind at either strike. • • •

Q. (By Mr. Cooper) Before the strike of April, 1941, how many years had it been since there had been a strike at this plant?

Mr. Lamb: Objection. • • •

The Master: All right, I will take this answer to this question, pursuant to Rule 43-C, excluding it on the grounds of immateriality, but just make a record of it so that any appellate court, or Judge Picard, if he considers it material, may take it into consideration. • • •

A. The Mt. Clemens Pottery Company has never had a strike since 1923. • • •

Q. In fact, have you ever had a wage dispute at the pottery during the last quarter of a century?

A. We have not. • • •

The Master: All right, we will go back on the regular record of the case.

Q (By Mr. Cooper) I notice going over your testimony when Mr. Lamb was examining you, Mr. Doll, that there were several questions about waiting time. Can you describe to the Court what is done with reference to computation of hours of work if a machine breaks down during the day?

A. If the machine breaks down for some short period, the employees stay in the department and do not ring out. If it is evident that the breakdown is going to be something of long duration, why, they ring out and leave the plant and come back at a stipulated time.

Q. By "long duration," approximately what period of time do you have in mind, Mr. Doll?

A. Say a period of an hour or more.

Q. Are you familiar, sir, with the geographical area in which the employees of the pottery live?

A. Our employees live generally within a radius of 10 miles of Mount Clemens and in the city proper.

Mr. Nunneley: That reminds me, I forgot to bring that map which your Honor requested.

Q. (By Mr. Cooper) Have you observed the practices of these employees, of getting from their homes to the plant? • • •

A. The employees that live at a distance generally arrange to pick up others who are working at our plant

and who live in the general vicinity or who may live on the route coming to the pottery, and to bring them along with them. It is quite customary for them to ride with full cars. • • •

June 19, 1942.

The Master: Well, in going back over the record here, I find that I have admitted Exhibit 29 without deciding its legal effect. I will do the same with the exhibit identified yesterday.

Mr. Cooper: Exhibits 81-A to J, I believe. • • •

Mr. Cooper: I would like to make one inquiry before we take further testimony and that is in the hope of expediting the completion of the defendants' proofs.

We have been unable to ascertain up to this point from our cross-examination of certain plaintiffs' witnesses as to who was the recording secretary of Local 1083, United Pottery Workers of America, during the period of March and April, 1941. Miss Freddle, who was on the stand, testified that at a subsequent period she was the recording secretary, but she did not advise us as to who her predecessor in office was. • • •

My only thought was if the plaintiff union can furnish us with that information it will, perhaps, reduce the number of witnesses we may otherwise have to subpoena. • • •

The Master: I wonder if you could examine the minutes, Mr. Lamb, and see if they would tell who the recording secretary is at that time, or was. The minutes are marked, just for the record, with the letters "A" and "B" on June 9, 1942, that are being referred to (handing documents to Mr. Lamb). • • •

Mr. Lamb: Martha Peters signed some minutes in—this is in August of 1941.

The Master: What about the minutes in March?

Mr. Lamb: The minutes in March were signed by Margaret Yochum, Y-o-c-h-u-m,—I think it is. • • •

ERNEST A. HARMS, was thereupon called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Cooper:

Q. Where do you live, Mr. Harms?
A. In Mt. Clemens.
Q. You are employed by the Mt. Clemens—
Mr. Lamb (interposing): What is the street address?
A. 270 Jones.
Q. (By Mr. Cooper) You are employed by the Mt. Clemens Pottery Company?
A. Yes, I am.
Q. In what capacity, sir?
A. Right now I am a foreman.
Q. Of what department?
A. Brushing and dipping.
Q. How long have you been employed by the Mt. Clemens Pottery Company?
A. 13 years.
Q. That would be back around 1929, or so, that you started work?
A. About 1929, that is right.
Q. Have you held various jobs there since that time?
A. Yes, I worked on the bench for ten years; after that I became foreman.
Q. During the period that you were working on the bench, what type of work were you doing, Mr. Harms?
A. I was doing dipping.
Q. And then when was it that you became foreman?
A. In July, 1939.
The Master: Were you assistant-foreman before that?
A. No, I wasn't.
Q. (By Mr. Cooper) Before you became foreman you

were one of the regularly employed dippers in that brushing and dipping department, is that right?

A. That is right.

Q. Did you punch a time clock at that time?

A. Yes.

Q. You did the same sort of work as the other dippers did?

A. That is right.

Q. Since becoming a foreman, have you continued to punch the time clock?

A. Not since I have been a foreman.

Q. During the period from October, 1938, to April, 1941, Mr. Harms, can you tell us approximately how many employees were engaged in the brushing and dipping department?

A. About between 95 and 100.

Q. Is there more than one shift in that department, or just one shift?

A. There are two shifts.

Q. Do the shifts have different starting times?

A. Yes, the day shift starts usually at 7:00 and the other shift starts, the night shift starts at 9:00 or 10 o'clock, depending on the production needed.

Q. The starting time of the latter shift varies somewhat to different periods?

A. That is right.

Q. According to what factors?

A. According to the production.

Q. Is the regular starting time of the earlier shift more fixed?

A. Yes, that is all about 7 o'clock.

Q. During the period in which you have been foreman of the brushing and dipping department, and up until April, 1941, what time did you customarily arrive at the plant in the morning?

A. I usually get there an hour before starting time.

* * *

Q. (By Mr. Cooper) During this period you have been

foreman, Mr. Harms, what do you customarily do after arriving at the plant?

A. I usually go in the department and take care of my time and see that things is in order for starting time. Occasionally I am out at the time clock.

Q. By the way, referring to Exhibit 30-A, can you point out what time clock the employees in the brushing department and the shipping department use?

A. (Referring to Exhibit 30-A) This is the south time clock, this is the north time clock. The south time clock.

The Master: They use the south time clock marked on the chart as time clock "B"?

A. That is right.

Q. (By Mr. Cooper) During most of the period prior to April of 1941, were there one or two time clocks at the point marked on Exhibit 30-A as time clocks B?

A. There were one.

Q. Do you know, Mr. Harms, whether or not other departments also starting at 7 also used the same time clock?

A. Yes, I do.

Q. What departments would they be?

A. They would be the chipping department, the boiler fireman, the maintenance, and the kiln crews. And there would be gloss unloading and loading.

Q. Have you had occasion—

The Master (interposing): Pardon me, Do you know about how many men in all of these departments used the time clock at 7 o'clock, or just before 7?

A. Yes, about 200 or over. • • •

Q. (By Mr. Cooper) Have you had occasion from time to time to observe the group of employees which has just been referred to while they were punching in at the time clock at this period from 14 minutes to 7 to 7 o'clock?

A. Yes.

Q. Can you state from your observation about how long it would take that group to get through the time clock?

A. It would take them about nine or ten minutes to pass the clock.

The Master: At the time clock B on the 7 o'clock shift, do the employees go in and punch the time clock by departments, or do different departments intermingle?

A. They fall in line just as they come in.

The Master: Regardless of what department they come from?

A. That is right.

Q. (By Mr. Cooper) Now, are there employed in the brushing and dipping department certain individuals known in the trade as brushers?

A. That is right.

Q. Are there also dippers?

A. That is right.

Q. And are there also spongers?

A. That is right.

Q. Does the work of the brusher and the dipper and the sponger bear any relationship from one to the other?

A. Yes, it does.

Q. Could you describe to the court what that process is?

A. Well, in the first place, the brusher has to be there in order to brush the ware for the dipper. The dipper can't dip it unless it is brushed, and the sponger can't sponge it unless the dipper dips it. One can't work without the other.

The Master: When the ware comes into your department, how does it look?

A. It is in the bisque stage and it is dirty. It has to be brushed, brush the sand off.

The Master: Is there sand on it?

A. Yes.

The Master: Are there also imperfections that you can chip off as well as brush off?

A. That is right.

The Master: Does the brusher do both the loose sand and so on?

A. The loose particles off, and they have a little grinding stone that they grind it off, unless it is too bad, and then they send it out.

The Master: And the operation performed in your department is putting the glaze on the ware?

A. That is right.

The Master: So that the brusher first brushes the ware off, cleans it up, and then the dipper dips it in a solution which has the glaze?

A. That is right.

The Master: Then it is turned over to the—who is the third operator?

A. The sponger.

The Master: And what does the sponger do?

A. She sponges the bottom off so that it doesn't stick onto the sagger.

The Master: Sponges the bottom off?

A. Sponges the bottom off of the cup; that is on cups. And on the flat, of course, the girl sets them on and it goes out as it is.

The Master: Are the spongers all girls?

A. Yes, sir.

The Master: And the brushers?

A. All girls.

The Master: What about the dippers?

A. Men.

The Master: All men?

A. That is right.

Q. (By Mr. Cooper) Let me ask you, then, Mr. Harms, whether or not these three persons can start work unless they are all there?

A. They have to all three be there.

The Master: Let me ask you this in that connection: can there be an accumulation of work turned out by one of these parties? For example, can the brusher in the preceding day pile up a lot of ware that he has brushed ready for the dipper to go to work on?

A. No, because at the end of the day it is all pounded in. It is turned in, and they work right up and they never have any left over.

The Master: During the day can the brushers get ahead of the dipper?

A. Well, he probably could through the day a little, but there would be none left over.

The Master: As to the sponging operation, does that have to follow the dipping operation in order to do an effective job of sponging, or can that ware be piled up a little bit?

A. That cannot be piled up. It has to be done immediately after it is dipped.

Q. (By Mr. Cooper) Is there a certain bench or other place, Mr. Harms, where the dish is placed after it has been brushed and before the dipper picks it up?

A. That is right. It has to be brushed and put onto a bench.

Q. Is there sufficient room on the bench for a considerable quantity of the ware to be piled up before the dipper starts taking it out?

A. Well, in the first place, the dipper does not take it off of there. It is picked up by somebody else after the brusher gets through with it, and put onto a table, or to a truck, rather, and put over onto the table.

Q. And brought over to the dipper by truck?

A. That is right.

Q. And then does the dipper work directly off the truck, or is the ware taken from the truck and put on another bench?

A. I believe I have got the two confused. Speaking of the one operation as the cast ware and cups, and the other is the flat ware. There are two different classifications there now. If you are speaking now about the cast ware and the brushing girls, or cast ware and cups, that is one thing, and on the flat ware is another.

Q. What is the situation as to the cast ware and cups?

A. The situation as to the cast ware and cups, that is brought in in boxes and the girl has to brush them and put them onto the table. The dipper takes it off of the table, puts them in the tub and dips them, and the girl on the other end of the tub sponges them and puts them onto the truck.

Q. And what is the situation as to the flat ware?

A. The flat ware, the girls brush it and put it onto the table, and another fellow picks it up and puts it into a truck and wheels it over to the dipper, and they dip it right out of the truck.

Q. And what does the sponger do?

A. On the flat ware?

Q. On the flat ware.

A. They do not sponge flat ware.

Q. What does the sponger do on the cast ware and cups?

A. They sponge them and put them onto a truck, and we have a man to wheel those out.

Q. How long a period can elapse between the time a piece of ware is dipped and the time it is sponged?

A. Well, it couldn't be over a couple of minutes.

Q. What would happen to the ware if it were allowed to sit more than a minute or two after it had been dipped and before it was sponged?

A. Well, the glaze on it would become crystal-like and it would chip off the ware. The girl wouldn't be able to handle it. The moisture would be gone out of the glaze, and the ware, and the glaze would become dry and it would just go off, peel off, rather, wherever they would happen to touch it.

Q. During the period that you have been foreman, Mr. Harms, are you ordinarily in the department at the regular starting time for the 7 o'clock shift?

A. Most of the time, yes.

Q. And is that also true with reference to the shifts that come in later?

A. That is right.

Q. On the basis of your observation what would you say as to whether or not the employees begin actual work before the regular starting time?

A. I would say they do not start before the regular starting time.

The Master: By "actual work" are you referring to production work or do you include, also, the job of getting tools ready and also other things ready for production work?

A. I mean by getting ready for production.

The Master: You mean they don't even start getting ready for production until—

A. (Interrupting) They get ready for production, but there is no production started—most times after 7. Once in a while, occasionally, it might be or one might have a piece or two dipped before the whistle, or something like that, but not very often.

The Master: Do you have a whistle at 7 o'clock?

A. Yes.

The Master: Has that been true all during that period?

A. Yes.

The Master: That is from 1938 on down to the present date?

A. That is right.

Mr. Lamb: With reference to the whistle, is that in that department or plant?

The Master: Is that a plant whistle or a whistle in the department?

A. A plant whistle.

Q. (By Mr. Cooper) On the basis of your observation, Mr. Harms, what does an employee do between the time he gets into the department and the time actual production begins?

A. Well, in the first place they get in there and they grease their arms with vaseline and put on some finger cots, look around for their apron, and occasionally take a chew of tobacco before they start. Sometimes some of them change shoes.

The Master: Incidentally, do those practices apply to the three types of employees that you have in your department, or do some of them vaseline their arms and others not?

A. Some do and some don't.

Mr. Lamb: Some take a chew of tobacco, I presume, and some don't.

The Master: I mean between different classes, that is something the dipper has to do?

A. The male greases their arms and the female doesn't.

The Master: How about the finger cots?

A. All use those.

The Master: All three classes of employees?

A. That is right.

Q. (By Mr. Cooper) What has been your observation, Mr. Harms, as to how steadily the employees worked during the morning after the production does get started?

Mr. Lamb: Objection. That calls for a general conclusion.

The Master: I don't think it is very material, but it may round out the picture of the operations at the plant. I will take the answer.

A. What is the question?

(The question was read.)

A. They don't work all the time. There is periods where they are not doing anything.

The Master: May I ask this; do the defendants make a claim that you are entitled to deduct the time that the employees, for example, go to the toilet during the day and not compute that in the working hours of the employees?

Mr. Cooper: It is our position, your honor, that in the case of these piece-workers they are entitled under the law to put in 2400 minutes a week of productive work.

The Master: You make a definite distinction then between the way the law applies to piece-workers and the way the law applies to hourly workers?

Mr. Cooper: Yes, your honor. * * *

Q. (By Mr. Cooper) Do the employees ever make lemonade, or anything of that sort, during the day?

Mr. Lamb: Objection. * * *

The Master: It does sound rather leading; on the basis of that objection I think I will sustain the objection.

Q. (By Mr. Cooper) How do the employees spend their time during the day?

A. Well, they spend it in the dressing-room or eating candy.

Q. You mean what part of their time is so spent?

A. Oh, I see. I don't just quite get—I just don't understand the question. • • •

Q. (By Mr. Cooper) And how steadily do they continue doing the dipping, or whatever job is assigned to them?

A. They don't dip every minute. There is a lot of times, as I say, they go to the dressing-room and eat candy and change their glaze, and if they happen to meet somebody or have a little talk with them, or something.

Q. Any other incidental activities that you have seen them engage in during the day, outside of their regular work?

A. Well, they objected to the question you asked me, but I did of my own observation see them make this soft drink when they were supposed to be working, because I have had some of it myself. • • •

The Master: Was this on one occasion or did this happen a number of times?

A. Frequently, more than once.

The Master: During the period of October, 1938, to April, 1941?

A. That is right.

The Master: Each year, or one particular year?

A. In the last in particular I never—the last year I didn't observe anybody doing that, because I was too busy at other things and I didn't watch them close enough, but I know they did eat candy and they did stop on the way back from the dressing-room and talk with whoever they wanted to. • • •

Q. (By Mr. Cooper) Have you ever observed, Mr. Harms, whether or not one of these three-men crews, I should say three-person crews, finishes their work before the quitting time?

A. They all do.

Q. Could you describe to the Court the general situation with reference to the finishing up of work in the day and quitting time?

A. Well, in the first place, if they are supposed to quit at 3:30, or 4:30, whatever the time would be, say, for instance, four o'clock, they would stop ten minutes to, the dippers would wash the tub and the girl probably wash the pail off she used; they would stall around there until the time was four o'clock, then they would go out with the rest. A great many times they would get out to the clock and wait there until it would be four o'clock before they would punch it, sometimes five or six minutes.

Q. On the basis of your observation both as an employee and as a foreman, both as a journeyman and as a foreman, can you tell the Court how the company's computation of hours worked compares with the amount of time that an employee is actually doing productive work?

Mr. Lamb: Objection.

The Master: He may answer.

A. They are taken off on the time cards, computed by the time cards.

Q: Are you familiar with the method by which the company's computation of hours worked is taken off of the time cards?

A. They are not given to—they are only given credit for the hours worked and they are not working any more hours than they are given credit for.

Q. If an employee punches in the time clock at any time between 14 minutes to 7:00 and 7 o'clock, as of what time is he listed as having started work, according to the company's computation?

A. 7 o'clock.

Q. And if he punches out at the end of the day at any time between one minute after 3:00 and 14 minutes after 3:00, what time is he figured as having quit work?

A. He is paid up until 3 o'clock.

Q. Under the company's computation, is any deduction made from hours of work as so computed, because of any non-productive time the employee might have spent during the day?

A. There is not. There is no deductions.

Mr. Lamb: Objection to the question.

The Master: I will take the evidence on it. Will you describe, Mr. Harms, just what the dipper does when he gets in the department in the morning after he has punched in the time clock and got into the department?

A. It takes him, after he has punched the clock, about two minutes to get in there.

The Master: I beg your pardon?

A. It takes him, after he has punched the clock, two or three minutes to walk in there to the job. Then, as I said before, he has to grease his arms, put on his overalls; some of them wear a rubber belt—rather, apron, I should say; put that on on top of the overalls.

The Master: Do they all wear overalls?

A. Some do and some don't.

The Master: About what proportion?

A. I would say about 98 per cent of them wore overalls.

The Master: Do they take their clothes off and put their overalls on?

A. Put their overalls on right over the top.

The Master: Then those that wear aprons put aprons on?

A. That is right.

The Master: About what proportion of them wear rubber aprons?

A. I would say about two out of the whole group wore aprons.

The Master: There are very few wear aprons?

A. That is right.

The Master: And what does the dipper do?

A. Greases his arms, puts on his finger cots, usually has a talk with the other fellow about what happened the night before or whatever they might be talking about. I never listened to it, but they were talking about something.

The Master: Does the dipper have any tools he uses in his work?

A. No tools, outside of the finger cots. No tools.

The Master: The dipper, you say, dips the ware into a solution which puts the glaze on the ware. Is that solution in permanent tubs or is it in movable tubs?

A. It is in movable tubs.

The Master: Does the dipper have to do anything to get those tubs ready in the morning?

A. The tubs are there in the morning as he comes in.

The Master: Are they in a position to use them?

A. That is right. Occasionally they might be an inch or two out of the way and he might have to move it one side or the other. That happens about once a month.

The Master: Are the tubs cleaned up and in condition to start work, or does he have to do anything to them?

A. The tubs is in condition to go to work, except they have to take the water off and stir it up. * * *

The Master: Does he take a stick and stir it up then?

A. That is right.

The Master: Then, after completing those tasks, is the next step dipping ware?

A. That is right.

The Master: Is there anything else you can think of the dipper does in the morning?

A. He doesn't stir this mix or take the water off before seven o'clock. This stirring or mixing and taking the water off happens after 7 o'clock.

The Master: You include that in production work?

A. That is right. * * *

The Master: Now, is there anything else you can think of that the dipper does in the morning?

A. That is all he does.

The Master: Does he repeat the same process when he comes back in the afternoon, after going out to lunch?

A. That is right. * * *

The Master: Will the dippers take their overalls off when they go out at noon?

A. They take their overalls off at noon when they go out.

The Master: The process that is followed by the dippers when they come in in the morning is exactly the same as the process when they come in in the afternoon after going out to lunch?

A. That is right.

The Master: Now, will you describe what the dipper does when he gets through dipping as the noon hour comes along, or the noon half-hour, and up until the time that he punches the time clock out, in going out to lunch?

A. Usually we quit about 12. Between eight and five minutes to, they begin to take off their finger cots and work without them. They wash their arms. They get a clean pail of water to wash their face. And at the gong, they are ready to go. The overalls, there is one strap thrown over the shoulder and one strap on, and as the gong goes, they are gone.

The Master: Where do they put the overalls?

A. They leave them there.

The Master: On the floor?

A. They have posts or pillars around there with some nails in; they hang them on there.

The Master: Do they have to do anything to the glazing solution when they leave?

A. Not a thing.

The Master: Do they have to do anything to the tub which contains the glazing solution?

A. Not a thing.

The Master: They don't clean that out at noon?

A. No, they do not.

The Master: When they leave at night, is the same process followed?

A. At night the same thing is followed, only they clean up the tub. They pull it out from the position they have been working that same day, pull it out and they wash it up around the outside, and they usually start at ten minutes to, to do that.

The Master: And the duties you have given, does that apply to the period from October, 1938, until April, 1941?

A. It does.

The Master: Or is that at the present time?

A. All times.

The Master: Would you describe, briefly, now, the operations carried on by the brusher when she comes in in the morning and leaves at noon, and then comes in in the afternoon and leaves in the afternoon?

A. She comes in in the morning. She is usually the last one in there. And, she has to put in finger cots, and find her brush. This is on the cast-ware, I am speaking about now. She has to find her brush.

The Master: Incidentally, in that connection, when you were testifying as to what the dipper did, were you speaking of cast-ware?

A. Cast-ware, yes.

The Master: How does the process differ?

A. It is the same as the flat-ware with the dippers.

The Master: It is the same as the flat-ware with the dippers?

A. Yes, but the brusher is different. The brusher gets everything ready, and after the whistle blows she starts to brush.

The Master: Just describe specifically what steps she takes in getting ready?

A. Well, they congregate there, at least four or five of the brushers, they are deciding—I don't know what they are deciding,—but they stand there and talk and they have their finger cots to put on, too, and they get their brush, and they stand there and talk until the whistle blows, and when the whistle blows they start to brush.

The Master: Do they have to do any work in getting the table or bench ready to work on?

A. Occasionally the bench they worked on the night before might be pushed to one side, and they might have to push it over to them to get the ware on them.

The Master: Do they have to go and get the ware any place?

A. They do not. It is brought to them. If the night man doesn't leave any for them, if there is no ware there to start out with, they wait there until a quarter after or ten after, whatever the time happens to be, until the trucker brings it to them.

The Master: These conversations they carry on, do you know whether those are social conversations or conversations pertaining to their work?

A. I never get close enough to them to hear it, because that is my busiest time in the morning to see that everything gets started.

The Master: So, you don't know what they talk about?

A. I do not.

The Master: What do they do when they leave at noon?

A. They stop brushing, and they take off their cots and their aprons and just walk around there until the whistle blows again, and they go out.

The Master: Do the brushers put on any kind of overalls or slacks over their dresses?

A. They do not. They wear an apron.

Q. How does the process differ—or, in the first place, do they follow the same procedure in the afternoon?

A. That is right.

The Master: Is there any extra clean-up job they have to do in the evening when they leave, or in the afternoon when they leave, that they don't have to do when they leave at noon?

A. Not for the brusher.

The Master: How does the process differ when they are working on flat-ware?

A. Well, when they are on flat-ware, of course, they have their finger cots, and they have tape on their hands, and they have—most of them change shoes. I wouldn't say most of them. Some of them change their shoes. And, they have their aprons off before they go out, and they have their finger cots off before they go out, and as soon as the whistle blows they are ready all together at the same time.

The Master: They just change their shoes on the flat-ware, not on the cast-ware?

A. That is right. I would say, to be exact, that the girls that stand up and brush the flat-ware, they are the ones that change their shoes. The ones that sit down, they don't so often change.

The Master: Now, with these spongers, will you describe what their operations are when they come in in the morning up until the time they start what you call production work?

A. Well, they come in in the morning and they have a talk with the brusher, and they talk until about 7 o'clock, and they wait until the brusher gets started, or until the whistle blows, and they have a pail, they have water in order to sponge the ware, and they go over and get their pail of water.

The Master: You mean they go over and get it after seven o'clock?

A. That is right, because the girl starts to brush at 7:00 and she puts the ware on the table at 7:00, and the dipper starts at 7:00, and the girl by that time goes after her pail of water, and it takes her a few minutes to get back.

The Master: Do they have to change their clothes or put any extra clothes on?

A. They put an apron on; that is all.

The Master: Where do they get the aprons?

A. They have their own.

The Master: Where is it kept?

A. It is pretty hard to tell where it is. Sometimes, where they forget sometimes where they put it, they have to look for it, but they usually try to put it on the job they left.

The Master: Do they change their shoes?

A. Not always.

The Master: Sometimes?

A. Sometimes they do.

The Master: Put rubbers on over their shoes?

A. No. They just change the whole shoe.

The Master: What about the sponges, do they have to get those ready?

A. No, the sponges don't have to get ready.

The Master: What if the sponge is worn out?

A. They will tell me that before they go out at night, or if they don't tell me they will have to wait in the morning until I get them another one.

The Master: Are they supposed to get the sponges if they are worn out before 7 o'clock?

A. Well, that is up to them. If they do, why, okay, and if they don't, it is okay too. Usually I try to be around and check them myself, and if they need them as a rule they will tell me at night. There is none of them too bad they can't use to start out with.

Mr. Lamb: Did he say he got the sponges for them?

A. That is right.

Mr. Lamb: You go to the stockroom and get them?

A. That is right.

Mr. Lamb: Then they sign some slip?

A. No, they don't sign any slip.

Mr. Lamb: How do you keep a record of who to charge the sponge to?

A. I don't keep any record.

The Master: All right, go ahead.

Mr. Lamb: Aren't the sponges paid for by the employees?

The Master: I will let him answer this question.

Mr. Lamb: I didn't want to interrupt; I was following through the Master's query because I didn't understand particularly.

A. This is the rubber sponge that my girls use and they are not charged to them. • • •

Q. (By Mr. Cooper) I would like to ask a few more questions on the matter we were on a little while ago with reference to the computation of hours worked. Do you know, Mr. Harms, how long the method of computing

hours worked, as you have described it, has been used out there at the Mt. Clemens Pottery Company?

Mr. Lamb: Objection.

The Master: I will take the answer.

A. It has been used ever since the time clock has been installed out there, about seven or eight years at least.

Q. (By Mr. Cooper) That method then was used during this period up to July, 1939, when you were working there as a dipper?

A. That is correct.

Q. When you pick up your time card during the day, during the period when you were employed as a dipper, would there be anything on it that would show you how many hours the company figured you had worked?

A. It would be marked over on the right-hand side of the card the hours that you had worked.

Q. How did that computation compare with the amount of time that you actually worked?

Mr. Lamb: Objection. • • •

The Master: Can't you break your question up and ask the time he went to work, what time he started in the morning, what time he quit at noon, and what time he went to work in the afternoon again, and the Court can draw the conclusion whether that amounts to more time or less time than the company has credited him with?

Mr. Cooper: Very well.

Q. (By Mr. Cooper) During the period you were employed as a dipper, Mr. Harms, what time did you generally ring in at the time clock in the morning?

A. I was usually the first one in and I was usually the first one out at night. I used to punch in there I would say at 14 or 13 minutes to, and I would go in there and I would get ready, but I would never be able to start or never would start before the whistle blew at starting time, 7 o'clock.

Q. And what was the situation in your own case as to the time that work was stopped at lunch time? • • •

A. It would be the same thing at the lunch hour; I

would take off my cots and my apron and I would say about three or four minutes to the hour, and by the time the whistle blew I would be ready to go. • • •

Q. (By Mr. Cooper) And what time would you actually start work again after lunch?

A. I would start, if we were starting at half past 12, I would start at half past 12; if we were starting at 1:00, I would start at 1:00.

Q. What time did you quit work at the end of the day?

A. At the end of the day would be the same thing. Usually I would quit at ten minutes to, at the end of the day, allowing me enough time to wash up, and a lot of times I would be washed before 3:30 or 4:00, whatever the stopping time was, and I would wait until it was time to go out to the clock, four o'clock, or 3:30, whatever it happened to be.

Mr. Lamb: Do I understand you always punched the time clock exactly at 4:00?

A. After. • • •

Q. (By Mr. Cooper) Whether or not when you were a dipper you worked more than eight hours a day, when according to the company's method of computation you had worked eight hours?

Mr. Lamb: Objection to the question.

The Master: He may answer. • • •

A. I was always given the time for what I worked. If it was more than eight hours, I was given credit for it. If it was less, there was never any taken off the hours I worked. I always received the full credit. • • •

Q. (By Mr. Cooper) Have you ever seen any employees in the dipping department ring out their time clocks and then go back to work?

A. I did not.

Q. Do you know whether or not during the period involved that was done?

A. It was not.

Q. Did you ever attend foremen meeting, Mr. Harms?

A. Yes, I did.

Q. How often would they be held?

A. They were held once a week.

Q. Who was in charge?

A. Mr. Doll, Sr., was in charge of the meetings.

Q. Did Mr. Doll have anything to say about the Wage and Hour Law at those meetings?

A. Yes, he did.

Q. And what would he say?

A. He would inform us that the law had went into effect, that we were only to work 40 hours a week and not to work overtime without permission, and in the case of emergency. At one time the limitation was 44 hours, then 42, then down to 40.

Q. Can you say whether or not, so far as the brushing and dipping department is concerned, those instructions were followed out?

Mr. Lamb: Objection. • • •

The Master: I will make this ruling, that it is my opinion that the question calls for a conclusion, but since it is a hearing before a Master I will take this testimony subject to the objection.

Will you answer the question?

A. Yes. • • •

Q. (By Mr. Cooper) Are there certain machines employed in the brushing and dipping department in addition to the hand-operation?

A. Yes, there is.

Q. How long have there been machines in there?

A. Since 1939.

Q. With reference to employees employed on those machines, what if any preparatory operations does that employee have to make in order to get the machine ready to start in the morning?

A. There is an individual operator for each machine and he has the handling, and he is in charge of that to have it to turn by 7 o'clock, and if it doesn't run before 7 o'clock the other employees can't do anything until the machine is started.

Q. Before you became a foreman did you work any place near Steve Anderson?

A. Yes, I did.

Q. Did you ever have any particular observation or recollection as to what Steve Anderson would do if he arrived at the brushing and dipping department before 7 o'clock, or before the regular starting time? • • •

Mr. Lamb: There is an objection, and I ask that the record show that the answer be stricken when it is given. • • •

A. Yes, Anderson would come in there, he wasn't usually—wouldn't get in there many minutes before 7 o'clock, and when he did get in there he followed the same procedure the rest of them did, put on his finger cots—greased his arms first and put on his finger cots, and him and two other fellows, they used to buy Copenhagen on shares, and they used to leave it in the department, and occasionally it would get knocked down and roll somewhere else, they would have to find that and pass that around and visit with some of the other employees near him, and by 7 o'clock he would be almost ready to go to work.

Q. What is this Copenhagen that you refer to?

A. That is snuff, or Copenhagen; it is a tobacco of some kind, I don't know just how it is made or what it is. I have used it as snuff, I never chewed it, but they chewed it.

Mr. Lamb: It dropped on the floor every day?

Q. (By Mr. Cooper) Do you remember particularly whether or not Steve Anderson used vaseline or grease on his arms?

A. He did.

Q. Regularly?

A. Yes, sir.

Q. Or just occasionally?

A. Regularly.

Q. Now, did you ever have particular occasion to observe Lillian Socia come into the department to go to work?

A. Yes, I did.

Q. Can you state whether or not there were certain preparatory operations which she customarily engaged in before starting work?

A. She would first stand out by the clock and talk a little bit after she had punched in, and she would walk in slowly. She would get in there and she would pick out a certain chair or stool, rather, to sit down and brush on, and she would go and get her brush. Then she would find a pillow and fluff that up before she sat on it. Then she would get some tape—I don't know whether she had eczema or what it was, on her arms, but she required a lot more attention than anyone else in there. She would have tape way up to here (indicating). It was almost proud flesh at times, I don't know what it was, but she had to put a gauze on that first and put a tape on top of that.

Q. Was that a frequent or infrequent thing?

A. Every day.

Q. Do you have any idea whether that is something that could be done in a minute or two?

A. It can not be done in a minute. In the first place, she would not bring her tape in. She would get the tape from what the company furnished, and the tape would only be furnished for the girls on the machines, because they handle a little bigger ware and they was allowed tape to tape their fingers with. Otherwise their finger cots would wear out often. She would have to wait before four girls would get through with that, and it was already after 7:00 before they were all taped up before she would get it—pardon me, I mean to say it was 7 o'clock before the other girls would get through with it, before she could get it to tape her hands.

Q. How long would it take her to tape up her hands in the method you have described?

A. Well, when she would come in there, she wouldn't wait by these girls that used the tape. She would put her finger cots on and she would fuss around with the other stuff, and if it was before seven, she would wait until the whistle blew, then she would probably brush a few

pieces, and get up and get the tape after they were through with it, after seven o'clock. She couldn't get it before seven and she would have to stand there and wait before they were through. It takes them till seven to get through with it.

Q. Have you had occasion to observe her while she was putting the tape on her hands and arms?

A. Lots of times I have helped her.

Q. About how long would that take?

A. I would say it would take about three or four minutes. • • •

Cross Examination

By Mr. Lamb:

Q. Mr. Harms, you are the man they call the most hated man in the Mt. Clemens Pottery Company, isn't that correct?

Mr. Cooper: Objection. It is not a proper question.

• • •

The Master: I think you should restate your question and make it more specific. • • •

Q. (By Mr. Lamb, continuing) Mr. Harms, are you familiar with the fact that a committee of workers has called on the management of the Mt. Clemens Pottery Company and in that connection referred to you as the most hated man in the plant?

Mr. Cooper: Another objection on the ground it assumes something as to which there has been no evidence.

The Master: No, it doesn't assume it because it asks him whether that is so. If he says it is so there will be some evidence on that.

Mr. Cooper: If it is so understood I will have no objection.

The Master: I will take the answer.

A. No.

Q. (By Mr. Lamb, continuing) You were made a foreman in July of 1939, is that your testimony?

A. That is right.

Q. You say now that you usually get there an hour before starting time, is that correct?

A. That is right. About an hour ahead of the starting time.

Q. Do you punch a time clock card now?

A. Not since I have been a foreman.

Q. You were, then, from 6 o'clock roughly to 4, or do you stay after work, too?

A. If there is something I want to do after 4 o'clock I stay and do it, and if there isn't anything to do, I will go at 4. If everything is done and I want to go at a quarter to, why, I will go at a quarter to.

Q. Quarter to 4?

A. Yes.

Q. You leave before the employees, do you?

A. The employees leave at 3:30.

Q. Then, you say you usually stay at least 15 minutes after the employees have all left?

A. Yes, fifteen minutes or half hour, depending on what I have to do and want to do.

Q. So, roughly, you work some 9½ hours a day, is that right?

A. About that.

Q. You are paid on the weekly basis?

A. That is correct.

Q. How much are you paid?

Mr. Cooper: Object to that as immaterial. . . .

The Master: I am not allowing it to be asked now. If it weren't for being a matter that the individual question might be considered confidential, apart from it being material to the lawsuit, I would take the answer subject to the objection.

Q. (By Mr. Lamb) You are the foreman of the brushing and dipping department; is that one department or is that two departments?

A. That is one department, but both operations are done in the one department.

Q. Do you have an assistant foreman?

A. I don't.

Q. How many persons are employed in the brushing and dipping department?

A. You mean about at that time—between 95 and 100.

Q. At what time, I said "are"; up to at least April, 1941, how many employees were there?

A. About 95 or 100.

Q. Now, these employees use time clock "B," is that correct, on Exhibit 30-A?

A. That is correct.

Q. What other departments use time clock "B" on Exhibit 30-A?

A. This department (indicating)—

Q. (Interposing) Read them out; the packing.

A. The packing and the storage, the dipping and the boiler and engine room, the gloss unloading; the sagger filling—that means the loaders, doesn't it—the sagger fillers, and the chipping and selectors.

Q. The employees in the glaze room?

A. That is right, the glaze room, the maintenance.

Q. Can you advise us how many employees use time clock "B" prior to 7 o'clock in the morning?

The Master: Just to get this clear, you mean for the shift that is designated as the 7 o'clock shift, or do you mean prior to 7 o'clock, including 6:45, 6:30 and 6:15?

Mr. Lamb: No, I mean without prejudice to the fact that we deny there is such a thing as a 7 o'clock shift, how many employees use time clock "B" between 6:46 and 7 in the morning?

A. I would say on the average of 200.

Q. (By Mr. Lamb) On the average of 200, and do you have knowledge of how many use time clock "A"?

A. I don't.

Q. Now, the whistle that you refer to is a plant whistle that blows at 7 o'clock?

A. That is correct.

Q. And does it blow again in the afternoon, or at lunch time?

A. It blows at 12 at the lunch hour and it blows again when they start after lunch and it blows at quitting time.

Q. What time?

A. If we quit at 12 it blows at 12 and if we start at 12:30 it blows at 12:30.

Q. Does it change from day to day?

A. No.

Q. In other words, if it doesn't change from day to day it blows at 12?

A. That is correct.

Q. And at 12:30 every day?

A. Yes.

Q. What time in the afternoon?

A. I would say at 3:30.

Q. 3:30. Well, now, do I understand from your description of these activities that the employees in your department that quit at 3:30 have taken off their finger cots, possibly taken off their aprons, and checked out at 3:30, is that right?

A. Yes.

Q. They all check out exactly at 3:30, is that right?

A. Not exactly at 3:30; at 3:30 they go out and whatever time it takes them, if it is 2, 3 or 4 minutes after.

Q. So that all of your time clock cards will show that your employees checked out at 2 or 3 minutes one side or the other of 3:30, is that correct?

A. Well, I was never there when they all went out; if someone happened to stop on the way, I don't know what he was doing, if he got out 14 minutes after.

Q. 14 minutes after what?

A. Instead of 3:30 it would be before 16 minutes to 4, it would be all right.

Q. Up to 3:34, is that right?

A. If he stopped on the way and talked, I didn't follow him out there.

Q. So we haven't any time clock card that will show that the employees checked out at 4:12 or 4:29, that never happened, that the employees have a varying time of leaving?

A. Yes, in the case of a break-down, they would go out fifteen minutes earlier, if there was nothing to do.

Q. And do they sometimes work later, to 4:14?

A. Yes, the next day if everything is O. K. they would make that 15 minutes up.

Q. I see. Well, then, will you generalize some more as to what the time clock cards will show for the employees in your department, as to the time that they leave? You have now said it will be within two or three minutes one side or the other of 3:30, is that right? • • •

The Master: I don't think he said that. He said normally it would be two or three or four minutes after 3:30. Then he said there were exceptions to that. • • •

Q. (By Mr. Lamb) Do some of the employees punch out a minute or two ahead of 3:30?

A. Not to my knowledge.

Q. Well, do they work up to the time that the whistle blows and then take off their jackets and make a beeline for the time clock?

A. Most of them has got everything off at the time the whistle blows.

Q. I see.

A. And all they have to do is walk on out.

Q. Walk out to the time clock and punch it?

A. That is right.

Q. And you say that usually takes two or three minutes?

A. About that. Of course, if they stop on the way, I don't know how long it takes some of them. It shouldn't take over two or three or four minutes to get out of there.

Q. Well, are these employees in the brushing department usually piece workers, too?

A. That is right.

Q. Workers on a piece rate?

A. Yes.

Q. Will you indicate on this Exhibit 30-A where a majority of the employees in the dipping and brushing department are?

(Witness indicating on exhibit.)

Q. Right under the word "dipping?"

A. That is correct.

Q. Then when they leave, they walk down what is marked a yellow line across this bridge?

A. That is right.

Q. Under the word "sagger?"

A. Yes.

Q. To time clock B, is that right?

A. Yes.

Q. Whereabouts are the employees of the brushing department located?

A. Same place.

Q. Also under the word "dipping," is that right?

A. Yes.

Q. I will hand you what has just been given me by Mr. Cooper, being Exhibit 16-B, 11-B, 13-B, 10-B and 8-B.

Mr. Cooper: I think Mr. Lamb has been reading the court reporter's initials.

Mr. Lamb: Well, they are not all of those exhibits, are they? Weren't there a series of numbers on them?

Mr. Cooper: They are single exhibits.

The Master: These would be Exhibits 8, 10, 11, 13, and 16. I assume on each of these exhibits there are a great many sub-numbers that we don't have here.

Q. Are these all employees in the dipping and brushing department of which you are foreman (handing time cards to the witness)?

A. No.

The Master: Which ones of them are in the dipping and brushing department?

A. Those are, and this one is not (indicating).

Q. (By Mr. Lamb) That is, Exhibit 8, Leo Stafford is not in the dipping and brushing department?

A. He is not.

Q. Well, with reference to the other exhibits, 10, 11, 13 and 16, being the time cards of Clarence Burgess, Nelson Luchtman, Luella Rohrbeck and Mary Sawicki, those employees, at least, are in the brushing and dipping department?

A. That is right.

Q. Will you show me any day on any one of those cards of any one of those employees where they have checked out at 3:30?

A. (After examining exhibits): None on there.

Q. Do you know what department Leo Stafford works in?

A. I don't even know him. • • •

Q. (By Mr. Lamb, continuing) I want to ask you whether you have departmental clocks around in that department?

A. We have not.

Q. You have not?

A. Have not. I am sorry, but I made the mistake. I was referring to the 3:30 on this time right now. This here I got mixed up with the other time, not because I just seen the cards, but I did before this. Right now it is 3:30. Before, these cards are right, that is the time we had the 7 to 12 and 1 o'clock, and then to 4.

The Master: 4 or 4:30?

A. That was my mistake. At that time it was 4. I made that mistake. I was thinking of now. • • •

The Master: From October, 1938, to—

A. (Interrupting) 1941.

The Master: April, 1941.

A. That is right.

The Master: What was the shift during this period of hours?

A. 7 to 12 and 1 to 4.

The Master: Throughout that entire period?

A. That is right.

The Master: That is one hour off at lunch?

A. Yes.

The Master: And the change now has been you only have a half hour off at lunch?

A. That is what I was speaking about. I made the mistake. I am sorry, but I didn't think about it.

Q. (By Mr. Lamb) I will show you the card back

again and ask you if on those exhibits 10, 11, 13 and 16 you can show us any time when any employee there checked out at 4 o'clock (handing exhibits to witness). Did you say 4 or 4:30?

The Master: He said 4.

Mr. Lamb: 4, O. K. Show us any time, or even two or three minutes after 4.

A. This particular one worked on the night shift.

Q. Mary Sawicki?

A. Sawicki, yes.

Q. Are you sure?

A. Yes, I am positive.

Q. Then answer the question as to whether on Exhibits 11, 10, and the other one there, Louella Rohrbeck, Exhibit 13, you can point to any case where the witness, or this employee, checked out at 4 or a minute or two or three afterwards?

A. No, I cannot.

Q. Were you always foreman on the day shift?

A. Yes.

Q. And who is the foreman on the night shift in your department?

A. Haven't any foreman in there at night; we have a sub-foreman on the machine operators, who takes charge.

* * *

Q. I take it that when for any reason there isn't enough work, that the employees in your department are sent home at times other than what you have designated as the four o'clock shift?

A. If the shift came in and there wasn't anything to do, they would go home, yes.

Q. So that employees may leave, the time clock cards may show they leave at various times during the day, is that right?

A. That is right. * * *

Q. (By Mr. Lamb) For instance, I noticed on the time clock card of Mary Sawicki for the period ending November 14, 1939, the first morning she punches in at 11:47,

the next day she punches in at 3:16 and the next day at 2:18, is that correct?

A. It must be correct, if it is on there. • • •

(A time clock card of Mary Sawicki was marked Exhibit 16-A, by the reporter.)

The Master: For the record, the card which the witness has just testified about, being the card of Mary Sawicki for the pay ending November 14, 1939, has been marked Exhibit 16-A.

Q. (By Mr. Lamb) On those same days she checked out at 9:48, 10:46 and 10:51, is that correct?

The Master: Let the witness see them.

(Exhibits were then presented to the witness.)

A. That is correct.

Q. Then the next two days she checked in, that is Monday and Tuesday, she checked in each day at 6:31, is that correct?

A. That is right.

Q. And out at 4:04 and 4:11, the same days?

A. That is right.

Q. Did you advise her the day before what time she should check in?

A. I do advise them, yes. • • •

(Time clock cards of Clarence Burgess were marked Exhibit 82, 82-A to 82-Z and 82-AA to 82-LL, respectively, by the reporter.) • • •

(Time clock cards of Mary Sawicki were thereupon marked, respectively, Exhibits 16-B to 16-Z and 16-AA to 16-LL by the reporter.) • • •

Q. (By Mr. Lamb) I note on the cards of Clarence Burgess, being Exhibits 82, 82-A, 82-B, 82-C, 82-D, 82-E and 82-F, that each morning of that period he checked in his time clock at 6:31. Will you verify that, please?

A. (After examining exhibit) I think that is correct.

The Master: It is not important, I guess, but there is one 6:32 in here, on Exhibit 82-E.

Q. (By Mr. Lamb) In other words, for the period between November 14, 1939, and February 6, 1940, each and

every working day except one day during the week of January 23, 1940, when he reported at 6:32, he checked in at 6:31, is that correct.

A. That is correct.

Q. Every working day between November 14, 1939, and February, 1940?

A. That is right.

Q. Now, I note on the time clock card of Nelson Luckman for the week ending February 6, 1940, that he also punched in at 6:31 every morning of that week, did he not?

A. That is correct.

Q. And each morning of the week ending February 20, 1940, he punched in at exactly 6:31, too, did he not, Mr. Nelson Luckman?

A. This one figure is blurred here. I don't know whether that is 31 or not. I couldn't say on that one.

Q. At least on the first Wednesday, Thursday, Friday, and then the Monday and Tuesday, Wednesday, Thursday, then that Friday seems to be blurred?

A. That is right.

Q. But on Monday and Tuesday again that is 6:31 each time?

A. That is correct. • • •

(Time cards of Nelson Luckman were thereupon marked Exhibits 83 to 83-JJ, inclusive.)

The Master: For the record, the cards of Nelson Luckman have been marked, the card for November 26, 1940, was previously marked as Exhibit 21, and the card for February 25, 1941, was previously marked Exhibit 11. The remainder of Nelson Luckman's cards from November 14, 1939, to April 8, 1941, inclusive, have been marked Exhibits 83 to 83-JJ, inclusive.

Q. (By Mr. Lamb) You were the foreman of the department in which Mary Sawicki worked, were you not?

A. That is right.

Q. And also of Nelson Luckman?

A. That is correct.

Q. On Exhibit 16-R, being the card of Mary Sawicki for the period ending June 25, 1940, I notice that the first three days she reports in at 11:46, 11:46, and 11:47. Then on Monday she reports in at 6:16. On Tuesday, 9:03.

The Master: You might have him looking on with you at the same time.

Mr. Lamb: Wednesday, 6:31; on Thursday, 6:16; on Friday, 6:16; on the following Monday, 11:46, and 11:46 on Tuesday; is that correct?

A. That is correct.

Q. Did you instruct her to report at those times? . . .

A. Not at those times on the card.

Q. (By Mr. Lamb) I notice that each of those days, irrespective of the starting time, she starts one minute after the quarter hour or two minutes after the quarter hour, and in each of the times irrespective of the working time, she has had her time computed from the following quarter hour; is that not correct (handing cards to witness)?

A. Where there is 6:16, her time was computed from 6:30.

Q. That is right, and where it is 6:31, it would be computed from 6:45, is that correct?

A. That is right.

Q. And then the total time computed for her under the company's method of computation that we understand to the succeeding quarter hour and so forth, her total computation, the company's total computation of the time worked by Mary Sawicki in that two-week period ending June 25, 1940, amounts to exactly 84 hours, is that correct?

A. I think that is correct. I haven't added it up, but I think it is correct.

The Master: Well, it is correct that that is the company's computation, isn't that correct? You can tell that by looking at it.

A. That is correct.

Mr. Nunneley: He hasn't checked it.

The Master: Can you see the 84?

A. Yes.

Q. (By Mr. Lamb) And on the week or two-week period ending July 9, 1940, being Exhibit 16-S, Mary Sawicki, under the company's computation and method of computing her working time, worked exactly 84 hours, isn't that correct?

A. That is correct.

Q. Have you ever punched the time clock card of Mary Sawicki?

A. No, sir, I did not. • • •

The Master: Have you ever punched out a card for any employee.

A. I have not.

Q. You know that certainly had been protested by a committee of workers calling on the management, don't you? • • •

A. I do not.

Q. (By Mr. Lamb) Is this the first time you have heard that claim, that you punched out or took out time cards and punched them through the time clock for the girls?

A. I never heard of it. The question has been asked me just once before.

Q. When was that?

A. In the last week or two. Mr. Cooper asked me that, if I punched somebody's card out.

Q. Is it your practice ever to stand near the time clock and watch persons in your department check in?

A. I would say maybe about four or five times a year.

Q. And did you advise them to step on it to get to work?

A. I never advised them to step on it at all.

Q. Did you see Mr. Doll at the time clock?

A. No, sir. • • •

Q. (By Mr. Lamb) And I include also Mr. Doll, Junior; have you seen him?

A. Mr. Doll, Junior, had been there once or twice maybe, and would be there for the reason maybe to ask me a question.

Q. Have you seen Mr. Doll, Senior, Mr. Doll, Junior, at the time clock watching employees check through?

A. No, I never have.

The Master: Which Mr. Doll, Junior, did you refer to in your answer?

A. Either.

Q. (By Mr. Lamb) I notice on the card of Nelson Luckman, being Exhibit 83-A, for the work period two weeks work period ending November 29, 1939, that he checked out at 3:59, is that correct, on the time card?

A. 3:59 is correct.

Q. Under the company's method of computation, do you know when he would have been paid for?

A. Yes, he would have been paid up until 3:45.

Q. Now, did you have any knowledge of Mr. Luckman on that Wednesday, being the first Wednesday indicated on the time card ending November 29, 1939, what Mr. Luckman did between 3:45 and 3:59 that day?

A. I can't recall that.

Q. On the following day that he worked, he checked out at 4:01, is that correct?

A. That is correct.

The Master: Have you seen it?

A. Yes, I have seen it.

The Master: All right.

Q. (By Mr. Lamb) And you have no knowledge of any difference in the activities of Mr. Luckman between the time he laid down his tools on the first day indicated ond day when he is marked out at 4:01, have you?

A. I haven't any knowledge; the only thing, it might have been he was supposed to have gotten out of there, his work was completed at 3:45 and he should have been out before that.

Q. Yes, but have you any knowledge of the difference in any work that that man did those two days when he checked out within two minutes of each other?

A. I can't recall, but he must have been dipping, or something, in there; I don't remember what his activity was those particular days.

on this card, when he is marked out at 3:59 and the sec-

Q. You can't remember any particular working time or hours or minutes worked by employees outside of by making reference to the time clock cards, can you?

A. No.

Q. So you didn't mean to indicate to the Court when you said that Mr. Anderson greased his arms or put a finger cot on that you had any recollection of his having done that on any particular day, have you?

A. He has done it every day.

Q. Outside the fact that you have observed him putting on his finger cots, you can't point to a particular day on which he did it, can you?

A. No, I can't point to a particular day, but they put them on every day.

Q. Or the day you said he dropped his tobacco, you can't tell us about that?

A. No, I can't. • • •

Q. (By Mr. Lamb) Now, this operator who you say operates these mechanical dipping machines—

A. Yes, sir.

Q. He arrives some time before 7, does he not?

A. Yes, sir.

Q. How much before 7?

A. I would say about three-quarters of an hour or an hour.

Q. I see. Is he an hourly employee or piece workers?

A. He is a salary-paid man.

Q. He is paid on a salary. Now, just what is his function, to get things moving and rolling at—in a proper working order?

A. He has to go in there the same as if he is working by hand. He has to take the water off the glaze, he has to inspect the machine, whether the guns are in working condition so that they can spray. He has to see that it is clean in order to operate, he has to get everything in shape, see that the air compressors are all running and everything is in contact, ready to go at 7 o'clock.

Q. Is there any requirement of him getting the machine warmed up?

A. No.

Q. Or the dies heated?

A. No, no requirements of that. The requirements are just to start them up to see that the fuses are not burned out.

Q. Now, you said you saw a girl stall around at the time clock once, waiting for four o'clock to arrive. Could you give us the name and date that that occurred?

Mr. Cooper: I don't recall whether that was the testimony either, your Honor.

The Master: What was your testimony on that point?

A. I didn't say anything about a girl. I said I have often seen them stall around at the clock. I didn't specify any girl, I don't think.

Q. (By Mr. Lamb). Can you specify the girl, and give us the date?

A. I can't specify the dates, like this one fellow in particular, I can specify him. I can't remember the other girls' names. It happened quite often.

Q. You are not able to tell us who they were or the dates when it may have been?

A. Well, Clarence Burgess was one of them.

Q. Do you know when Clarence Burgess was at the time clock at four o'clock?

A. No, I don't . . .

Q. (By Mr. Lamb) So that if he got out there at one minute of four, was his instructions to wait until the whistle blew before punching that time clock?

A. He wouldn't very often get out there before that time.

Q. Well, the fact is that the usual practice would be to hear the whistle blow and then stop and go to the time clock?

A. The time varies with different individuals in any department. This particular Burgess, he might have quit work at 3:30 or he might have quit work at 3:45. If his time was up at 3:30, he might have stalled around until after the quarter after, or if his time was up after 3:45, he might have stalled around until one minute after 4.

Q. So that the whistle you refer to doesn't have anything to do with the starting or stopping time?

A. Not with all the people. The time varies each day.

The Master: You mean, when you speak of these employees stalling around before the time clock, that they were waiting until the 15-minute period would pass, so that they could punch their time clocks out and get credit for another 15 minutes?

A. That is right.

Q. (By Mr. Lamb) You say you have seen Clarence Burgess out there waiting for four o'clock to arrive, is that correct?

A. That is correct.

Q. Can you give us the date of that?

A. No, I couldn't give you the date.

Q. Can you give us the name or date when you saw any other employee participate in a thing of that sort?

A. I never thought that I would answer for the days, and for that reason I never kept the dates. I just happened to go out for some reason to tell somebody something and happened to see him. I don't know the dates, but I did see the employees. I don't know the dates.

Q. Won't you say that at least the girls in the brushing department work until the whistle blows and then punch the time clock—leave and punch the time clock?

A. As a rule, if there is enough to keep them busy up until that time; or, if there is enough work and production is slow, and I will hold them over 15 minutes, I will hold them over 15 minutes.

Q. If you hold them over 13 minutes, what happens then?

A. I don't hold them over 13 minutes. If I would hold them over 13 minutes, they would still get the 15 minutes.

Q. Does it take the same girl the same length of time usually to walk from her department to the time clock?

A. That all depends who they meet on the way, or who they are waiting for, or whether they went to the dressing-room first in the department, or whether they

went outside to the dressing room. That all depends where they went.

The Master: In other words, your testimony is that it doesn't take them the same length of time, that that varies from day to day.

A. If they want to run, they run. I won't say "run," but walk fast, or if they want to talk to somebody, or wait for somebody else to get ready, they might quit one minute after, like 3:36, and wait to almost 4 o'clock for the rest of them to come.

Q. (By Mr. Lamb) I suppose what you say about leaving there is also true of their arriving, isn't that correct?

A. That is right.

Q. Now, these employees are piece work employees, are they not?

A. That is correct.

Q. And you say that these piece work employees aren't urged to get on the job and get the thing going because it is to their own advantage?

A. All I have ever told them is to be ready to work by 7 o'clock.

Q. And what about the fact they are on piece work? Do you urge them to get started and get the work going, it is to their own advantage to get their production out?

A. I urge them to get to work by 7 o'clock, be ready to work by 7:00.

Q. On these mornings that Mary Sawicki checked in every day at 6:31, what were your instructions about her getting to work then?

A. Well, she wouldn't have to work any sooner, and this particular Mary Sawicki has a brother or two in there that she occasionally goes down to give the car keys to, or something, before she starts in.

Q. You mean 6:31, checking in every day, she takes the—she gets on the job at 6:45, is that right, even though she is on piece work?

A. That is right. • • •

Q. (By Mr. Lamb) You say on your direct testimony that it takes the average employee 2 or 3 minutes to get from the job to the time clock?

A. From the time clock to the job, yes.

Q. From the time clock to the job?

A. Yes.

Q. And the job to the time clock?

A. That is correct.

The Master: I think he said two or three and added four; two or three or four.

Mr. Lamb: I think he said two or three, and I am under the impression I asked a question that added, could it have taken four.

The Master: I believe it was the other way around, but I will ask the witness what is your testimony on that?

A. I think I said two or three minutes.

The Master: All right. I have a definite recollection, but it is not very material.

Q. (By Mr. Lamb) You say that this method of computing the time which the Mt. Clemens Pottery Company utilizes of paying to the succeeding quarter-hour when the employee checks in, that that method of computation has been in effect ever since you put in the time clocks some seven or eight years ago, is that correct?

A. That is correct.

Q. Which would have been back in, approximately, 1935?

The Master: 1933 was when Mr. Doll said, in the days of the NRA.

Q. What is your recollection as to that?

A. Yes.

Q. 1933?

A. Yes.

The Master: Do you have any recollection as to the date the time clocks were first installed?

A. No, not the date when they were first installed.

The Master: About how long ago was it?

A. About seven or eight years.

Q. (By Mr. Lamb) Do you have anything to do with the physical computation of hours?

A. No.

Q. Do you have the decal girls in your department?

A. No, I do not.

Mr. Lamb: I think that is all.

The Master: Re-direct?

Re-Direct Examination

By Mr. Cooper:

Q. Mr. Harris, I show you Exhibit 82-HH, being the time clock card of Clarence Burgess for the period ending February 11, 1941, and ask you whether or not on each working day in that period Mr. Burgess punched in at 6:51, with the exception of one day when he punched in at 6:50?

A. That is correct.

Q. And I ask you whether or not on Exhibit 82-II, being the time clock card of Clarence Burgess for the two weeks ending March 11, 1941, he punched either at 6:48, 6:49 or 6:50 on each working day?

A. That is correct.

Q. And I show you Exhibit 82-JJ, the time clock card of Clarence Burgess for the two weeks ending March 25, 1941, and ask you whether he punched in earlier than 6:48 on any day in that period?

A. He did not.

Q. And I show you Exhibit 82-KK, the time clock card of Clarence Burgess for the 2 weeks ending April 8, 1941, and ask you whether he punched in earlier than 6:47 on any day during that two-week period?

A. No, sir, he didn't.

Q. And are the punch-ins in that time card either 6:48 or 6:49?

A. That is correct.

Q. And I show you Exhibit 82-LL, being the time clock

card of Clarence Burgess for the pay period ending April 22, 1941, and ask you whether or not he punched in either at 6:48, 6:49 or 6:50 during each working day shown on that exhibit?

A. That is correct.

Q. And I show you Exhibit 83-Y, being the time clock card of Nelson Luckman for the period pay ending October 29, 1940, and ask you whether he punched in any earlier than 6:50 on any day during that pay period?

A. He did not. • • •

Q. (By Mr. Cooper) I show you Exhibit 16-CC, the time clock card of Mary Sawicki for the period ending December 10, 1940, and ask you whether she punched in any earlier than 6:51 on any day during that pay period?

A. There are two different weeks on this particular card.

Q. And Mary Sawicki worked on the same shift during each of the two weeks?

A. No, she didn't, she worked on different shifts.

Q. What were the starting times of the respective shifts?

A. 12:00 o'clock and 7:00.

Q. And during the week when she was on the 7 o'clock shift, did she punch in any earlier than 6:51 on any day?

A. No, she didn't.

Q. What were the other times when she punched in during the week to which you have just referred?

A. 12 o'clock.

Q. I wonder if you understood my question, Mr. Harms. Referring again to the week when she was on the 7 o'clock shift, you said that the earliest she punched in was 6:51 in the morning. During that week what were the other times she punched in?

A. 11:47. • • •

CHARLES E. DOLL, JR., was thereupon called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Nunneley:

Q. Your name is Charles E. Doll?
A. Jr., that is right.
Q. Jr. How old are you, Mr. Doll?
A. I will have to think. 37.
Q. And you are employed at the Mt. Clemens Pottery?
A. That is right.
Q. How long have you worked there?
A. 17 years.
Q. You have been working there full time during that period?
A. Full time for 17 years.
Q. Did you work there some before that?
A. Yes, I worked around there ever since I was old enough to get a permit.
Q. Did you go to college?
A. Yes.
Q. Where?
A. Ohio State University.
Q. What did you take there?
A. Ceramic Engineering.
Q. Ceramic Engineering; that means the pottery business, in plain business, is that right?
A. That is right.
Q. And what is your present position?
A. I am assistant to the general manager.
Q. Your father is the general manager?
A. That is right.

Q. In general, what have been your duties or what departments have you worked in, in the course of your experience?

A. Well, as a workman, my experience was in the clay department and the mold department, and in a supervisory capacity of one kind or another I have been in practically all of them.

Mr. Nunneley: I will state for the purpose of the record that the questions I ask will have reference to a period prior to the commencement of this suit to April 14 or 15th, 1941. • • •

Q. (By Mr. Nunneley) Now, Mr. Doll, do you recall of there being a law passed called the Wage and Hour Act?

A. Yes, sir.

Q. Was there any discussion of that around at the plant?

A. Yes, we acquainted everybody in a supervisory capacity with what it was and when it took effect, and those kind of details.

Q. Before the Wage and Hour was passed, was there a definite work week in the plant?

A. Yes. We had been on about a 45-hour week ever since the days of the NRA.

Q. And how many days in that 45?

A. We worked five approximately 9-hour days.

Q. That would apply to the departments other than the kilns?

A. That applied to the production departments. The departments that operated 24 hours were on 8-hour shifts then, and have always been on that basis.

Q. The 24-hour departments so-called have always been 8-hour shifts?

A. Always.

Q. Was there any particular reason why there would be a definite hour program established? • • •

A. (Interrupting) Well, at the time the Act was passed and the recommendations that were made at the time governing working conditions and maximum employment, we established that system in the plant at my in-

sistence because I wanted a definite hour program under which we could operate.

Q. And since the Wage and Hour Act has been passed, of course there has been a limit on working hours at the plant, is that correct? • • •

The Master: No legal limit on working hours. There is simply the legal limit on straight time.

Mr. Nunneley: That is right, legal limit on straight time.

A. That is correct. • • •.

Q. (By Mr. Nunneley) Has that had any effect on your production or production control? • • •

A. The passage of that Act has had a favorable effect, if you want to put it that way, on our business. I am personally in favor of it because it does assist in the control of production, which is a definite advantage.

Q. Now, prior to the passage of the Act you were working 45 hours, I believe?

A. Approximately so, yes.

Q. What, if anything, had to be done by way of readjustment to start you in on the 44-hour week when that law went into effect?

A. Of course, in the 24-hour departments there was no readjustment. In the production departments the reduction of approximately one hour per week was not a distinct hardship, but we expanded our employment force some at that time and continued to operate.

Q. And when you brought it down to 42, what was the result, what was done on that?

A. Of course, from the company's angle it didn't mean anything particularly except that we had to expand the working force in order to continue the production under a decrease of two hours in the production week. This, of course, doesn't apply to the 24-hour departments because they have always both before and since been on an 8-hour basis.

Q. And when you came to the 40-hour week what was the effect there? What had to be done?

A. We again had to employ additional help to main-

tain operations with a two-hour less work week on straight time.

The Master: And has the company always had the policy of trying to arrange the work week so as to avoid overtime payments?

A. That is the policy because of financial necessity. You can't produce pottery and operate in competition with all of the other factories in the industry and produce any part of your product on a time and a half basis.

Q. (By Mr. Nunneley) This pottery that is produced sells at medium or low prices, so-called?

A. Yes, it sells at what is commonly known as low prices.

Q. Do you know when time clocks were installed for general use in the plant by employees?

A. Why, it was the latter part of '33 or early '34, I think.

Q. Had there been a time clock there before that time?

A. Well, the few hourly workers that we had always had punched a time clock ever since I can remember.

Q. Now, since the time clocks were installed in general use, as you have stated, what has been the method of computation of hours?

A. The method has been to start your calculation on an even 15 minutes period following the time clock register, continuing the calculation until the last full 15 minute period before another time clock register.

Now, if there are two registers in the forenoon and two in the afternoon, the total sum of the complete 15-minute periods included is the total record that is kept for clock purposes.

Q. In other words, no periods of less than 15 minutes have been computed, is that one of the features of that?

A. I think that is—that is the way we do it.

Q. Now, has that been the practice ever since time clocks were in general use in the plant?

A. Yes, that was the way we started out operating and we have continued that method ever since, to my best recollection.

Q. Now, Mr. Doll, just in general, what are your duties, what were they during the period of this suit?

A. Well, I have a good many special assignments to look after and complete from time to time, but in addition to those I have charge of most of the purchasing and outside correspondence, all of the plant production and control work and the supervision over some of the supervisory staff, depending on the particular angle involved.

Q. And are you familiar with the matter of their starting times, stopping times, and so on?

A. Yes, in a general way.

Q. Did each department have a standard starting time?

A. Yes, we try to have a standard starting time for each department.

Q. Were they always the same between departments?

A. No, that depended upon our production requirements as related to our mechanical equipment, and it also depended upon the production requirements as related to our volume of orders. In some departments it was necessary to always operate two shifts; some departments occasionally operated two shifts, in other departments you never operated but one shift.

Q. And did the same department always have the same starting time?

A. We tried to standardize it as nearly as possible, but we were not always successful; times you had to vary your starting time, depending on production conditions.

Q. And did each department have a standard quitting time?

A. Well, there again was something that you try to control, but it is not always within your power to control the day's production to the last 15 to 30 minutes.

Q. What time in the morning would you say, what was the starting time in the morning for the most people, for the greater number of employees, let's put it that way?

A. Why, 7 o'clock is the general starting time for most of the people.

Q. More people start at 7 than at any other time, is that correct?

A. That is right.

Q. And something has been said about a whistle. There is a whistle on the plant?

A. That is right.

Q. During the period that is involved here, did it blow in the morning?

A. We, for the last 20 years, have blown two whistles in the morning, one at five minutes to 7 and the other at 7 o'clock.

Q. Outside of waking me up in the morning, what was the purpose of blowing those two whistles?

A. The five minutes to 7 whistle was always construed as a warning whistle, either to people on their way to work who had not reached the plant, and to people in the plant who were dilatory about getting ready to go to work when the starting time came, and that whistle has been used for that purpose for a good many years. The 7 o'clock whistle is the starting whistle.

Q. Is there another whistle that is blown? What other times, let us say, did the whistle blow during this period?

A. 12 o'clock, 1 o'clock, and 4 o'clock.

Q. Was there any warning whistle at those times?

A. No.

Q. Other than at 7?

A. No, the 7 o'clock was the only one.

Q. Were those hours the hours when most people would be either quitting or starting work, the hours of those whistles?

A. Yes, those were normally the hours we tried to follow, to begin the shop.

Q. Now, something has been said about the discussion of the wage-hour act. How were the people who constitute the supervisory staff made acquainted with this wage-hour act?

A. Well, at our assemblies of these foremen, a thing like that would come up for discussion in its major de-

tails, and probably not once but several times, so that everybody would be thoroughly familiar with what it covered, and give such people an opportunity to ask questions in their own language just how those things were designed to operate and to get thoroughly acquainted with the company policy in relation thereto.

Q. And were any directions given to the supervisory staff in connection with it?

A. Yes, they were acquainted with minimum provisions, minimum wage provisions. They were acquainted with the maximum hour provisions they were acquainted with the overtime provisions and they were acquainted with the company policy that was adopted at that time to maintain, except in cases of emergency, of operations on a straight time basis.

Q. Did inspectors of the wage-hour division examine your plant during the year 1939?

Mr. Lamb: Objection.

The Master: I will take the testimony on it; if you know.

A. Yes, they were there in the latter part of the year.

The Master: It can be understood that you have a continuing objection, Mr. Lamb, to any evidence relating to this inspection.

Q. (By Mr. Nunneley) Did you meet these inspectors?

A. Yes, I did.

Q. What, if anything, did you have to do or did you do in connection with the inspection?

A. Well, my principal connection with it was to conduct one of the inspectors on a tour of the factory. While he was making his inspection, at his request, he wanted to make a tour of the plant, and interview the employees, and I was the one who piloted him through the plant and introduced him to these people.

Q. And what people did you introduce him to?

A. Well, as we went through each department, he selected, indicating to me a workman or woman that he desired to talk to. I would take him up and introduce him

to the folks in question, tell them who he was, tell them not to be afraid to answer any questions he asked and walk away and leave them in private conversation with him.

Q. Do you recall about how many employees he interviewed in that time?

A. We spent considerable time on this trip, and I would think about 30 people.

Q. Did you designate or select any of those people for him?

A. No, he chose everyone himself. All I did was introduce him and state his purpose.

Q. During and after the course of the inspection, did he make any comment to you regarding it?

Mr. Lamb: Objection.

The Master: Has the name of this inspector been named?

Mr. Nunneley: I don't know. Do you recall the name?

A. It was a party named Reifin.

Mr. Lamb: Objection, unless some of the plaintiffs were present.

The Master: Well, this comes under the same issue and again I will take the evidence and let the question of whether or not the inspection or the results of the inspection is material to be argued out in the briefs.

The question now is did he make any comment?

A. On our way back up to the office, he told me that the folks he had talked to were an intelligent group, that they had answered his questions in a satisfactory manner, that they did not seem to have any complaints to make, and he thanked me for spending the time with him.

Mr. Lamb: I ask that the answer be stricken.

Q. (By Mr. Nunneley) Mr. Doll, did he make any comment to or criticism to you of the method of figuring or computing time?

A. He didn't.

Mr. Lamb: Objection.

The Master: Same ruling.

A. He didn't mention that matter to me.

Q. Was the matter of cutting down hours without payment of overtime any handicap to the company? By that I mean in complying with the wage and hour law in reducing your time from 44 to 42 to 40, was that any particular handicap to the company?

Mr. Lamb: Objection. • • •

The Master: I will take the testimony. • • •

A. The one purpose of the law, to spread employment, was the one purpose that we followed. We did add people to our working force. It meant no financial gain to the company. The inconvenience at the time was limited to placing more people on the payroll with some attendant expense in training additional people.

The Master: Didn't you have to have more equipment and more machines to turn out the same production?

A. No. We have had during our expansion and modernization program, more mechanical equipment in most instances than we actually needed.

The Master: You always have to have some reserve in mechanical equipment, don't you?

A. That is right, emergency and old equipment as you modernize with new. That was not a problem.

Q. (By Mr. Nunneley): Did the fact you put on some more people mean any particular increase in the amount of the payroll?

A. No. Our volume of business remained about stationary, as I recall it, during that period. It may have grown slightly, but we merely used the extra people to continue to produce in two less hours.

Q. So that if you produced 100,000 dozen that cost the same whether you use 100 people or 110 people, so far as payroll is concerned, isn't that correct?

A. On a straight time basis, that is correct.

The Master: Well, of course, that would be so as far as the payroll costs are concerned.

Mr. Nunneley: That is right.

The Master: But, you certainly could get to the point where increasing the number of employees and having them work less time, it may not increase the size of the plant and the supervisory or force over the payroll, or over the employees, but it would become expensive, eventually?

A. Your total reduction over a period of two years was only 10 per cent, and in normal times any thrifty or healthy organization can handle a detail of that kind.

Q. (By Mr. Nunneley): It wasn't necessary for you to build on any pieces on the plant, or anything of that sort, to take care of it?

A. No; we had everything we needed.

Q. The reason there would be no great increase in the payroll would be because the people were paid on a piece-work basis, is that right?

A. That is fundamentally correct. • • •

Q. (By Mr. Nunneley): It wouldn't be necessary—or, was it necessary to increase your number of hourly employees to a great extent?

A. No, we didn't increase them to my knowledge at all.

Q. What kind of work or what shifts, let us call it, are your so-called hourly employees on, Mr. Doll, in general?

A. Well, the bulk of them are people engaged in maintenance work, carpenters, steamfitters and repair men of one kind and another, and then the men that operate the boiler plant are on an hourly basis; some of your janitor help and clean-up help; that pretty near covers it.

Q. Kiln men?

A. No, the kiln men are on a piece-work basis.

Q. They are on a piece-work basis?

A. Yes.

Q. Were the hours of work in the Mt. Clemens Pottery reduced each year as provided by the Wage-Hour Act?

Mr. Lamb: Objection; the time clock card would show that.

The Master: He may answer.

A. Yes, the straight time working time of the production departments was decreased two hours in the latter part of 1939 and two hours additional in the same period one year later.

Mr. Lamb: I ask that the answer be stricken.

Q. (By Mr. Nunneley): Now, Mr. Doll, something was said about a spray glazing machine, or a dipping machine, which I believe are the same thing. For the purpose of the record, will you give us a description of that machine, how it works, what size it is, and so on; just so we will get some idea what that thing is?

A. A spray glazing machines were developed to take the place of so-called hand dipping in which a dipper grasped a plate, submerged it in a tub of liquid glaze, took it out, shook off the surplus, and placed it on a rack to dry. That was a slow process and a tedious process, and the machine was developed to replace that operation.

Now, you still had the problem of placing the glaze on the surface of the piece of ware. A liquid bath was not found practical, and the process of applying that glaze by compressed air, the same as you paint a house with an air gun, was developed. The carriers for the product naturally have to return to the starting point after each operation, and the one known method of doing that is on a circle. These machines are constructed of—consist of a stainless steel table twenty-odd feet in diameter, with a series of holders around the outside perimeter.

A piece of ware is placed on each holder and the table in its revolving operation carries the holder inside a booth which holds the spray guns. These guns apply the glaze from the top and bottom at the same time. Holders continue their circle and leave the booth, and before they have returned for re-filling the product becomes dry enough to be lifted off and empty the holder for re-fill.

Now, these machines are operated by air and the glaze coat, the quality and the thickness of it are entirely controlled by the break-up that the air gives to the glaze material. We use a number of gauges to control this particular flow. The glaze, of course, is in a liquid state. It is mixed with the air and shot through nozzles before it is deposited on the product.

Now, this glaze is glass in a liquid form, and after it stays in the air a few minutes it hardens, eventually gets as hard as stone, and the one problem we have with this machinery is keeping it clean. For that reason we use stainless steel and aluminum and non-rusting materials in the construction, and every night the machine has to be completely cleaned. Every tip, every hose, every control, every valve, every gauge has to be cleaned of this glaze. If you leave it in there it will get hard and the thing won't work the next day.

References have been made to these men that come in and prepare these machines for the following morning, and they devote their entire time to re-checking and re-cleaning if necessary any of these working parts that may not have had all the attention they needed the night before, and you are ready for production. If you find a spray gun tip clogged up, or a hose doesn't work, or a gauge doesn't function, it is pretty late to take everything apart and clean it up and get back into production, so we have that preparation done carefully ahead of time.

Does that answer your question?

Q. In general. These holders for the ware, do they revolve as well as the large circle and the small one revolves too?

A. The table carries the holder in a stationary position until it goes into the booth, where it strikes a friction pulley and goes into a spin. The reason for that is to deposit the glaze coat uniformly from the guns and to throw off any surplus with centrifugal action. As soon as it comes out of the booth, it assumes a stationary position.

Q. About how many holders are on one of these machines?

A. Oh, there are approximately 100. Between 75 and 100 of them I think for saucers and items of that size. For plates there are some less. You can't get them as close together.

Q. Is there machinery attached to it for providing the compressed air?

A. We have a series of compressors, all the piping, oil drains, air cleaners and valves, other things that go with a complete installation.

Q. What turns it?

A. The machine?

Q. Yes.

A. It is driven by a motor with a V belt drive on the center shaft to the big table.

Q. Electric motor?

A. Electric motor. • • •

Q. (By Mr. Nunneley): Mr. Doll, in the operation of this machine, no hand dippers, I take it, are used, is that right, this spray glazing machine?

A. Not to perform the work. The men who operate these machines were hand dippers.

Q. They were formerly?

A. Formerly hand dippers.

Q. Girls or women place the ware on the holders in the machine?

A. On the holders, and remove it.

Q. And is it then brushed?

A. It had previously been brushed to clean it, before the glaze is put on.

Q. And sponged after it comes off?

A. No, there is no sponging operation on a flat piece. On a cup there is. The cups are done on the same principle, on a different machine, and they have to be done after they are glazed.

Q. Mr. Doll, Exhibit 73 has been identified as a map or plan of what is known as the gloss belt. Will you examine it and see if that is correct? • • •

Q. And how did that operate?

A. That is operated by electric power, if that is what you mean.

Q. Just tell us what the process is, how the ware gets on it and how it gets off, and where it goes.

A. Well, the ware is transported from these dippers and dipping machines to the belt. The belt was designed to provide a convenient system for loading this ware into the containers that took it through the kiln. The containers, known as saggers, move empty along the south side of the belt and are deflected into the individual sagger filling stations. The ware, on flat boards, is placed in stacks in these same stations, and operators place it by lifting it from the boards in individual pieces and placing it in these empty saggers.

When a sagger is filled, it departs on another conveyor belt and tracks around to where men load these saggers by stacking them on four-wheel cars. These cars are made of iron, fire clay slabs on the surface, and these saggers are stacked up a convenient height as the car moves along the track, and then the car moves into the kiln where the ware is fired to the desired temperature.

After the ware leaves this kiln it moves down a track to an unloading station on the same conveyor system where these full saggers are set off on to other belts and in their trip around are eventually emptied, cleaned, and ready for refilling.

Q. What was the normal starting time or work time in these departments?

A. The glost belt and a department not shown on here, which took the product away from the belt, generally were one of those 7 o'clock departments.

Q. In general, what was the noon hour?

A. 12 to 1 in those places.

Q. In connection with this glost belt system approximately how many people worked on it?

A. Well, the belt itself had close up to 100 people, and the chipping department that took the product away and which must be reckoned in any discussion of the glost belt,

because unless they can take it away they can't unload it off the belt, there must have been, well, there were 75 or 80 people in there, too.

Q. And what kind of help was it; male or female help?

A. Well, the chipping department was, oh, 80 per cent girls. The glost belt was probably 50 per cent, maybe 60 per cent girls.

Q. Did the fact there were a large number of girls employed on the system have any effect on the operation?

A. Well, any of you that have ever had dealings with large groups of help realize how hard it is to settle them down to a starting operation. They love to talk, and they are pretty hard to get down to business the first thing on that account. They are quite sociable, particularly the first thing in the morning, and they are just kind of hard to get under way.

Q. What about the practice or policy of the company relative to inviting or requesting employees to submit any complaints which they might have—

Mr. Lamb: Objection.

Q. (Continuing) —to the management?

Mr. Lamb: Objection.

The Master: I will take the evidence. This is another question of the same character as the inspection issue and it is one of the issues raised in the pleadings, and I will take the evidence.

A. Well, employees have been acquainted on more than one occasion by Mr. Doll, Sr., and their supervisors to the effect that if any of them had any complaints of any kind—

Mr. Lamb: May I interpose a question as to how they were advised?

The Master: Yes, I think you should state how they were advised.

Mr. Nunneley: Go ahead.

A. That we invited their complaints, and that we stood ready at all times to go into any matters in which they felt they had not been dealt with fairly. * * *

The supervisors acquainted them in groups and individually with the same thing. These matters were not confined to the rectification of any payroll errors, but were meant to include anything that an employee felt was something of a particular problem to him. The employees did utilize this system, not only on bringing what would be classed as complaints, but suggestions, criticisms, payroll errors, and other things to our attention over a long period, and on the part of a great many people.

The Master: How were the employees advised of the fact that you were receptive to complaints or suggestions?

A. Well, even new employees are advised of that at the time when they are employed. That is part of the company routine the same as you tell them about the first aid department and other pertinent facts.

The Master: Who tells them that?

A. The employment department, and during the period in question the superintendent who did the employing was the one through which one of these steps of bringing any of their problems was taken.

The Master: Well, have you observed—you say the superintendent in charge of employment?

A. Well, he is superintendent of the whole plant, and during this period had charge of the employment. He was both on the giving and the receiving end of this information that we are speaking of.

The Master: Who was that?

A. Mr. Roleau.

The Master: Have you ever been present when he has advised employees of that policy of the company?

A. Yes. In fact, when I substituted for him when he has been away or on vacation, I have given the same information.

The Master: You stated that your father also informed the mployees; how and when did your father give that information?

A. I can't give you the precise dates, but as far back

as 1925 it was his custom on some occasions, depending upon the circumstances, to call them together for some kind of a talk, and in the particular course of the discussion he always referred to that.

The Master: You are speaking now of the general meetings of all of the employees, or little groups?

A. No, we have had assemblies of employees in years gone by.

The Master: Well, the question was, you stated that your father advised the employees that you were receptive to complaints and suggestions, and I asked you how that information was given to them; I don't understand whether you mean it was given to them at meetings that were called of all the employees, or whether—

A. We had assemblies of employees at which he attended and addressed them on various subjects, including the one we are talking about.

The Master: Were you present at those meetings?

A. Oh, yes.

The Master: Do you know everything that you stated here from first hand knowledge?

A. That is correct.

The Master: Or are you testifying from hearsay?

A. No.

Q. (By Mr. Nunneley) During the period in question, do you have any knowledge of any complaint being made about the method of computing hours?

Mr. Lamb: Objection.

The Master: Same ruling, you may answer.

A. No objections that I can recall ever came to my attention and I was in a position to know in most cases about such matters.

Mr. Lamb: I ask that the answer be stricken.

Q. (By Mr. Nunneley) For illustration, if a group or department had an established starting time of 7 o'clock, at what time would they be permitted to pass the time clock?

A. We followed the practice of opening the clock 14 minutes before the established starting time.

Q. Who would be the person or the employee in control of that at the clock?

A. Well, that matter was in the hands of a watchman who was stationed at the clock.

Q. And would he be the person who would open the clock, release it at the proper time?

A. He would permit people in a certain department, or departments, to punch in according to his instructions on any given starting period.

Q. If the regular times were changed, who attended to notifying the watchman?

A. Well, under normal circumstances, I did; if I weren't there, and in an emergency someone substituted for me.

Q. For how long a period has that system been followed at the clock?

A. Ever since we have been using the time clocks for our employees.

Q. The same system has been used right up until the time this suit was started?

A. That is right.

Q. Is it used yet since the suit was started?

A. Yes, we use the same system.

Q. Confining it to the period of the suit, can you tell us when under the system of computing time, an employee would be considered as being late for work?

A. We generally consider that if he is not in the department, ready to go to work at the end of whatever you might call a 14-minute period or the following quarter hour, if he were not in the department ready for work at that time, he was considered late.

Q. And how were they all paid, or practically all of them?

A. Well, all but not over two dozen people out there, on a piecework basis.

Q. Do you know of any work that any of the employees did that they were not paid for?

Mr. Lamb: Objection.

The Master: Overruled.

A. No, I don't think I have ever heard of a single instance of that kind.

Q. (By Mr. Nunneley) Up until the time this suit was started, did you ever have any complaint by any employee that they had not been paid for the work which they did?

A. Yes, we had adjusted some matters in the office from time to time. That is not unusual with a thousand people for payroll or clerical errors on a piecework basis. Wherever an employee showed that was the case, we always made the correction. * * *

Cross Examination

By Mr. Lamb:

Q. Mr. Doll, will you advise us of the net profits of the Mt. Clemens Pottery Company in the years 1938, 1939, and 1940?

Mr. Nunneley: Objection. * * *

Q. (By Mr. Lamb) Mr. Doll, in that connection have you advised us what position you hold with the Mt. Clemens Pottery Company?

A. Yes. I am assistant to the general-manager, and I have—

Q. (Interposing) Do you have any title such as secretary, treasurer, or vice-president?

A. No, we are short of titles out there.

The Master: Did you have that position throughout this period of 1938 to 1941?

A. Yes.

Q. (By Mr. Lamb) Let me see, your father is president of the company, or general manager?

A. He is general manager.

Q. Who is the president of the company?

A. I believe Mr. Williams is president. * * *

Q. And your father, what title does he have? What position in the company does he have?

A. He is general manager. • • •

Q. Are there any other members of your family who are officers or connected with the Mt. Clemens Pottery Company?

A. I have a brother who is employed there.

Q. What is his name?

A. J. R.

Q. J. R. Doll?

A. That is right.

Q. What position does he hold in the company?

A. Well, I don't believe he carries a title.

Q. Isn't he Personnel Director?

A. I will take it back.

Mr. Nunneley: That is since the period covered by this suit.

A. Up to that time he carried no title.

Q. Is he personnel manager?

A. He is now.

Q. Who starts the glost belt running?

A. Who starts it to run?

Q. Yes.

A. Generally the foreman.

Q. Have you ever started it?

A. Yes.

Q. Have you ever been present when the employees checked through the time clocks, watched the process?

A. Oh, not regularly; I have seen them do it, yes.

Q. Will you give us your opinion as to how many employees can go through in a minute, one time clock?

A. Well, I think we get 20-odd through in a minute.

Q. How many?

A. 20-odd, maybe 24 or 25 people.

Q. You stand alongside of them with your stopwatch, do you?

A. I have timed them at different times, yes.

Q. Told them to "get moving"?

A. No, I have nothing to say to them.

Q. Are you familiar with any deductions from the pay for beginners?

A. Deductions from pay for the beginners?

Q. Yes, whether or not you have any policy of deducting anything from the pay of first—

A. (Interposing) For beginners you generally have to add to the pay, not deduct; I don't know why anybody would deduct anything from a beginner.

Q. Well, we may also wonder, but if you have any knowledge of any deductions of 10 per cent from pay checks of the girls during the first 10 weeks of their employment?

A. No, sir.

Q. You don't have any knowledge of that?

A. No, sir.

Q. You say that has not been done?

A. To my knowledge it has not been done.

Q. Would you have knowledge of that?

A. Would I?

Q. Yes.

A. I don't have much to do with the office records, practically none; I don't see the work sheets or the computations, or those things; it is all done and I may never see it from month to month, but I have never heard it.

Q. You mean you have never heard there was 10 per cent taken off the wages of girls?

A. No; you have to add because the law guarantees these people a definite minimum and they never earn it.

Q. Do you know whether that definite minimum was paid by the Mt. Clemens Pottery Company to the girls who were starting?

A. Do you say do I know it was?

Q. Yes.

A. As a matter of general principle I would say so; I can't give you any specific instances.

Q. Is it your testimony that you didn't know that 10 per cent was taken off?

A. I say I am not familiar with it; I can't tell you yes or no; I never heard of such a thing.

Q. Well, did you mean to imply that the Master that you had never heard of any errors in payroll computations, or complaints by employees about the computation of their earnings?

A. No, sir, my testimony was to the effect that we had never had anybody do any work they weren't paid for; that sometimes there had been errors that were later rectified, but that was covered by my previous statement. We have had errors.

Q. I see; you don't mean to imply you haven't heard of errors?

A. I didn't say so then and I don't say so now.

Q. What is the physical operation of your turning on the glost belt; will you describe that?

A. That system is controlled by an interlocking switch system connected to a master and emergency switches, and in a normal operation if you press one of the starting switches the current is thrown on.

Q. Whereabouts do you start that? In the general offices?

A. No, the foreman generally starts it at some one of his starting buttons, depending upon where he happens to be. He generally selects for his purpose of convenience one of them.

Q. And when you touch this master switch, that starts the whole machinery functioning by which the glost belt then goes in operation?

A. If it is in normal operating condition, yes.

Q. How many employees are engaged on that glost belt system?

A. Well, that department has close to 100, and then of course as I explained before, the department that takes the product away, there are 70 or 80 people more over there that must be practically considered as part of the same unit, although they are in a different room.

Q. So that there might be in the department a larger number than who would be on the glost belt itself, is that right?

A. Well, in the two departments.

Q. And what do you label the two departments?

A. The chipping department is a definite adjunct to the glost belt. The glost belt can't run without the chipping department running.

Q. How many employees work in the chipping and the glost belt department?

A. Well, you would have close to 175 people or 165 people.

Q. Do they use the same time clock in both departments?

A. Yes, they did at that time.

Q. Which one did they use?

A. They used the one you call "B" on your layout here.

Q. Exhibit 30-A?

A. Yes.

Q. Could you tell us whether or not the glost belt starting apparatus has any timing record? Whether you have any recorded record of the time of the glost belt master switch starting each day?

A. You mean one of these automatic check-writing outfits?

Q. A record, yes.

A. No, sir.

Q. As I understand it, you have charge of purchasing?

A. That is correct.

Q. Will you produce the records of the purchases of materials sold to the employees by the Mt. Clemens Pottery Company in the years 1938, 1939, 1940 and the first half of 1941?

Mr. Nunneley: What employees?

Mr. Lamb: All employees represented by us in this action.

The Master: What kind of record do you have of the purchases?

A. I have no individual records of the purchases. They are part of the company's records.

The Master: Yes, but what records does the company have?

A. If you buy, like Mr. Lamb is referring to, perhaps, you buy a bale of sponges from some sponge companies, you have an invoice that we keep for some period. I don't know how far back. Those things get pretty cumbersome.

The Master: What kind of summary records do you keep? • • •

A. The only record we have of the sales are the records in these work sheets.

The Master: Wouldn't there be a record that would show the total purchases and sales of sponges in a year to all employees, without distinguishing each employee?

A. No, not sales. The records would show the purchases of, perhaps, sponges, but they don't all go to the sales of employees. That wouldn't by any means show you if you bought $100 worth of sponges that every sponge in that $100 worth was again resold.

The Master: Where else are they used besides selling to the employees?

A. Well, of course, in your general operations around the plant you might need something for cleaning purposes. Somebody might want one to wash one of the company delivery vehicles with.

The Master: That wouldn't be a very substantial amount.

Mr. Lamb: Certainly you have a record of the amount you receive or charged for the sponges.

A. Just a record of the amount we pay for them.

Q. (By Mr. Lamb) And also the amount you receive?

A. Well, that record is in the work sheet.

Q. You would have some summary?

A. No summary.

Q. Of what you received at the end of the year for the sponges you bought?

A. No summary. • • •

The Master: As I understand you say there is no summary record showing total sales of various items of equipment to the employees?

A. That is right. You see, the amount involved is so small—if Mr. Doll stated $1000 I personally think he has overestimated by 100 per cent. I don't think we possibly could buy $500 worth of pails and scrappers and these other items you mention in any one year.

Mr. Lamb: And gloves.

A. And gloves, either; no, sir. You can buy a lot of gloves for 500 bucks.

The Master: You must have a summary record of purchases?

A. None whatsoever. No summary record of purchases. I can get an individual invoice for gloves or individual invoice for pails. • • •

Re-Direct Examination

By Mr. Nunneley:

Q. Mr. Doll, I have one question; I don't know whether this was brought out; what was the regular starting time of the gloss belt?

A. I think I said it was one of the 7 o'clock departments, didn't I?

The Master: I think you so stated.

Q. (By Mr. Nunneley) Something has been said about time clock "B"; is that where there are now two clocks?

A. Yes, we have two clocks now.

Q. Do you recall when the second clock was put there?

A. It was put in two or three weeks before the strike in April of 1941.

Mr. Nunneley: That is all. • • •

June 22, 1942

JOSEPH D. FOX, was thereupon called as a witness on behalf of the Defendants, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Cooper:

Q. Where do you live, Mr. Fox?

A. In Lakeline, Ohio, suburb of Cleveland. • • •

Q. Are you connected with an organization known as Industrial Advisers Bureau, Inc?

A. Yes, I am.

Q. Could you describe to the Court the nature of the activities of the Industrial Advisers Bureau?

A. It is a service organization that supervises the activities and compliance of industrial firms with certain laws, particularly labor laws. The complete activities of the firm consist of supervising the workmen's compensation program, the social security program, insurance program, and the wage-hour programs of industrial companies. • • •

The Master: Are you the only firm of that kind in the country?

A. We have some competitors in the workmen's compensation and social security services. I haven't heard—there might be some actuarial companies that do a wage-hour service, but I haven't heard of them.

Q. (By Mr. Cooper) Approximately how long has the Industrial Advisers Bureau been engaged in this line of work?

A. In all except the wage and hour supervision, they have been in business 11 years. The wage and hour work commenced October 16, 1940.

Q. And how long have you been connected with Industrial Advisers Bureau?

A. Since October 16, 1940.

Q. What is the nature of your work with the Bureau?

A. I am in charge of the wage and hour part of the business.

Q. And in that connection how does the bureau operate?

A. I have a crew of inspectors who go out and make factual inspections, and in the case of certain types of clients I make the factual inspection myself. And, in case another inspector makes it, he delivers a factual report to me, and I draw up a report with recommendations, and I always deliver those reports and go over them with the management of the company personally in every single case, and then four times a year we make a formal reinspection of the company and in between times we consult with them on new problems that arise. It is a yearly service in each case. • • •

Q. (By Mr. Cooper) In making such inspection, Mr. Fox, do you examine the method employed by a company in computing hours of work of its employees?

A. Yes. That is one of the important matters.

Q. Prior to your association with Industrial Advisers Bureau, did you have any other experience with the administration of the wage and hour law?

A. Yes. The day before October 16, 1940, I was an inspector for the Federal wage-hour division.

Q. How long had you been an inspector for the Federal Wage-Hour Division?

A. About a year and a quarter.

Q. That would take you back to some time in the summer of 1939?

A. The summer of 1939.

Q. About how many plants does your organization inspect for compliance with the wage and hour law, Mr. Fox? • • •

A. Slightly over 200.

Q. (By Mr. Cooper) Are there any potteries among your clients?

A. Yes.

Q. Approximately how many?

A. Five or six.

Q. Now, in the course of your work have you become familiar, Mr. Fox, with the methods used in these plants, and particularly in these potteries, in connection with the computation of hours worked?

Mr. Lamb: Objection. It wouldn't make any difference.

The Master: Overruled.

A. Yes, I have. • • •

Q. (By Mr. Cooper) Have you found any similarity between the general methods employed by the potteries and by other industries in computing hours worked?

Mr. Lamb: Objection.

The Master: Overruled.

A. Yes, I have. • • •

A. In fact, I found very few differences between potteries and any other type of industry.

Q. (By Mr. Cooper) Have you found any general pattern in industry generally as to the methods of computing the hours of work of an employee?

Mr. Lamb: Objection. • • •

The Master: Well, I think that is the only way such evidence could be given is by somebody who is familiar with the situation in plants, otherwise we would have to bring in maybe ten thousand individual workmen or employers, to testify as to what the practice is in their plants, and the court would have to fit it all together in a pattern. The substitute for that is to have a man who is familiar with the practices in various plants, from personal experience testify, so that I will also overrule that objection, but you may have a continuing objection on that ground, if there is no objection on behalf of the defendants to the plaintiff having a continued objection, so it will be unnecessary for you to repeat the objection.

• • •

Q. By Mr. Cooper: Have you observed, Mr. Fox, as to whether there is any general practice or pattern in

industry in this part of the country as to computing the number of hours that an employee has worked?

A. Yes, there is very definitely a pattern. • • •

Q. (By Mr. Cooper.) What is the general pattern or practice which is followed?

A. The general practice is where there are not three shifts without a pause, the general practice is to consider that the man has started to work at the regular working time, that is, every plant has a regular working time, regular starting time, and in the plants with three continuous shifts, or continuous shifts, they assume the same thing in effect in that unless the foreman indicates that one man has substituted for part of another man's shift, they also assume that the man has started at the regular starting time for his shift.

Q. Do you know of any plant that computes hours worked from the minute an employee rings the time clock?

A. I know of none.

Mr. Lamb: There is an objection to that.

The Master: Overruled.

Q. In plants that use time clocks, what is the function of the time clock card in computing the number of hours an employee has worked?

A. Principally an attendance record, and a record of lateness. You see, if a man has quit in the middle of the afternoon or left his work in the middle of the afternoon, they always depend on the foreman writing something in pencil or ink on the time card, so that the payroll departments use the time card to show whether the person was there during the normal work day, and in most plants where there is deliberate overtime work, the foreman has notified, or the payroll department has notified the foreman—it all depends whether the payroll department is a combination production control and payroll department. In that case, the payroll department notify the foreman as to how much overtime to allow them to work. And if the reverse is the case, if the foreman is the production control man, the foreman tells the payroll department how much overtime has been worked.

The Master: What was this you said about in some plants the foremen write down something on the card if the employee leaves early.

A. In this kind of a case, for instance, supposing a card shows a punch in the morning and perhaps a punch at noon, and no punches thereafter, the payroll department will not make any assumptions in that case. The foreman will be—if he hasn't already done it, will be asked to indicate the time the employee has left, whether he has worked a full day or not.

The Master: That is the case where the employee goes out and doesn't punch the time card out?

A. That is right. If the normal quitting time is 4:30 and he punches out at 2 o'clock, and the foreman hasn't made a notation, "Excused at 2 o'clock," the payroll departments will have to ask the foreman why the 2 o'clock punch.

The Master: From your experience, in plants employing a thousand men or more, do they have an attendant at the time clock to see that the men punch in and out, or do they just leave that to the men?

A. The ones engaged in war industries now have attendants, but I have noticed a lot of very large plants today have no attendants at the time clock.

The Master: They wouldn't let a man go in or out very often without punching in or out, without saying something to him, would they?

A. It all depends. It depends upon the location of the time clock. In some cases the foreman is supposed to attend to that, and in some cases a payroll clerk is sitting at the time clock during the normal punching time, but he is not there all day. Consequently if a fellow punched out, say, two hours before the regular quitting time, the payroll department would question the foreman about it, if he hadn't already made a notation on the card.

Q. (By Mr. Cooper) Suppose an employee rings in at the time clock 10 or 12 or 14 minutes before the regular starting time, under the practice as you have described it, when do his hours of work commence?

Mr. Lamb: Objection.

The Master: Overruled.

A. At the regular starting time?

The Master: Let me ask you this. In these plants you are familiar with, if a shift starts at 7 o'clock, for example, is the employee expected to pass the time clock at 7 or before, or is he expected to be at his position of work at 7 or before?

A. He is expected to be at his position, ready to work, at 7 o'clock.

The Master: Is that true of all the plants you are familiar with?

A. All the plants I am familiar with.

The Master: You don't know of any that simply require that he pass the time clock at 7 o'clock?

A. I can't think of a one.

The Master: In the plants that use time clocks that you are familiar with, what has been your observation as to the distance of the time clock from the position where the employee works?

A. That varies considerably. Anything from—in some plants they have a time clock in each department. In some plants they have two time clocks for a very large plant, large in area. And, I know one large plant where they only have one time clock for hundreds of thousands of feet of floor space. In some plants, particularly machine shops, the fellow punches in his time card, and then before he starts his first job, he punches the job card, which is used by the cost department. • • •

Q. (By Mr. Cooper) Suppose an employee rings out of the time clock some ten minutes or so after the regular quitting time. As of what time would the conclusion of his hours of work be computed?

Mr. Lamb: Objection, unless he refers to the plants he is making some claim about. • • •

The Master: He can describe the general practices he has observed, I think, on direct examination. On cross examination, if you desire to test his credibility by asking him for specific names, why, I will have to decide that at that time. I don't know what the law is on it. I, off-

hand, would think that—I am in doubt whether there is any privilege that exists there, but I will wait until the cross examination to decide that.

Would you give the question?

(Question read.)

A. It would be assumed he would quit at the regular quitting time.

Mr. Lamb: I ask that the answer be stricken as to what would be assumed.

A. I mean, they pay as though he had quit at the regular quitting time.

Mr. Lamb: Who is "they."

The Master: He means the employer.

Mr. Nunneley: We object to counsel trying to cross examine the witness as we go along.

Mr. Lamb: I am going to object to this kind of hearsay testimony.

The Master: Your objection is on the record; I will overrule it.

Mr. Lamb: I object to the basis of the question; who is the word "they."

A. I mean the payroll clerk.

Mr. Lamb: What payroll clerk?

Mr. Nunneley: We object to that.

The Master: You will have to go into that on cross examination; you cannot interrupt their examination unless you are stating objections.

Mr. Lamb: I am stating objections.

The Master: I will overrule it.

Q. (By Mr. Cooper) Let me ask you, Mr. Fox, whether or not the practice you have been describing is what you have observed as a common practice in some 200 or more plants where time clock cards are used?

Mr. Lamb: Objection.

A. That is what I have observed.

Q. Can you say whether or not there is a variation from that practice in the case of plants that do not use time clock cards?

Mr. Lamb: Objection.

The Master: Overruled.

Mr. Lamb: It is not only improper, but it is leading.

A. In plants that do not use time clock cards, which are very few in the case of production employees, the foremen will mark the elapsed hours, not the quitting time, but the elapsed hours in a time book, and there has to be very definite work done after the regular quitting time, before he will mark anything other than the normal number of elapsed hours.

Mr. Lamb: I ask that the answer be stricken. I don't know who he is talking about, the foreman might have a practice.

The Master: He is talking about general practices, and he is an expert witness, I think, on that subject, and I think the testimony is proper.

Q. (By Mr. Cooper) In making these inspections that you have described, Mr. Fox, do you have occasion to examine time clock cards themselves?

A. Yes.

Q. Roughly, how many such inspections have you made?

Mr. Lamb: Objection.

The Master: Overruled.

A. You see, I first want to explain this; even where I don't make the physical inspection, I have to go over certain evidence with the management of the company when I deliver the report, so I have to go into the matter of time keeping even if I don't make the factual inspection myself, but in my experience with Industrial Advisers Bureau, together with the Government experience, I would estimate it at, oh, 350 plants. . . .

Q. (By Mr. Cooper) Can you give the Court any rough idea as to how many time clock cards you may have examined?

Mr. Lamb: Objection.

The Master: Overruled.

A. Well, the best I could do there would be to say it would be thousands.

Q. Out of these thousands of time clock cards that you

have examined, how much before starting time, on the average, do most of the employees punch in?

Mr. Lamb: Objection.

A. That—

The Master: Just a minute. Overruled.

A. That varies according to the neighborhood, or according to the location of the plant, which has to do with the neighborhood that the employees come from. I could roughly classify them in two ways, those plants where the majority of employees live within easy street car distance, and those plants where the employees are spread out, from, say, a majority of them living beyond the normal transportation system, and it is quite different there.

In the plants where they live within easy street car distance, I found that the time clock cards are punched from 25 to 5 minutes before starting time. In the other plants, where the workers come from more varied distances, I have come across large numbers of time cards that were punched as much as an hour and a quarter, from an hour and a quarter to five minutes, in the case of the close-by worker.

There is a good reason for that, of course. From my own experience, as well as from what I have found in plants in questioning employees, you see I always question employees myself on the matter of time clock punchings; I found the reasons for punching in so early are varied in detail. In general, though, they can be summed up as follows: They come in early in order not to be late, in order to make sure they will not be late. For street car riders, I found that they deliberately planned to get there 15 minutes ahead of starting time, figuring that that is enough leeway for ordinary transit delays. Where they come from a large distance, depending on who has to get the breakfast, whether their wife gets it for them, or they get it themselves, they deliberately plan on more time so as to take care of breakdowns in their car, or traffic snarls, or things like that.

The thing that I have observed most has been that most employees have a very great horror of coming in late.

They don't like the atmosphere when they come in late, and, therefore, they make sure of coming on time.

In one plant, for instance, the Plain Dealer newsboy, one plant in Cleveland, the Plain Dealer newsboys sells over 500 copies of the Plain Dealer in the morning to people who expect to read them pretty thoroughly before they start after they get to the plant.

Mr. Lamb: What plant is that? I object to that.

The Master: Overruled.

Mr. Cooper: I don't think we should have these interruptions.

The Master: You will have to state it in the form of an objection, rather than the form of a request to the witness.

Mr. Lamb: I would state an objection, and ask that the entire answer be stricken. I think it is highly improper to allow any person to come in here and give generalities and not specific enough that we know what he is talking about.

The Master: An expert witness always testifies to generalities.

Mr. Lamb: And also that it is hearsay.

The Master: But now he has referred to a specific plant and a specific instance, I don't know but what you ought to state the name of the plant. I will wait until cross examination and you can ask the name of the plant, and I will pass on it at that time.

Q. (By Mr. Cooper) By the way, Mr. Fox, have you had any occasion to examine the time clock cards of employees of the Mt. Clemens Pottery Company, listed as plaintiffs or represented parties in this action?

A. Yes, I have.

Mr. Lamb: Objection.

The Master: Overruled.

Q. And how does the pattern of punch-ins on those cards compare with the general pattern as you have seen it on the several thousands of other cards that you studied?

Mr. Lamb: Objection. It is a conclusion.

The Master: I will allow it. I will hold this man is an expert, and that it is a proper subject of expert testimony.

A. I want to preface my answer by saying that I picked cards at random, and to me from the elapsed times that were allowed at the right-hand margin of the card, I would say that they are doing what practically all of the plants in my experience are doing.

Q. (By Mr. Cooper) Is there any customary practice as to making a deduction if an employee punches in at the time clock after his regular starting time?

Mr. Lamb: Objection.

The Master: Overruled.

A. Yes, there is.

Q. What is the general practice?

A. The general practice, which incidentally has been incorporated in a lot of Union agreements that I have seen in these plants, is to deduct a quarter hour if the employee comes in anything—well, in some plants if he comes late. If he is up to a quarter of an hour late, they deduct a quarter of an hour. In some plants he has got to be late at least one minute, that is, a full minute. In some plants, one plant in Detroit, for instance, he has to be late three minutes before they make a deduction.

Mr. Lamb: What plants?

Mr. Nunneley: We object to that.

The Master: You can go into that on cross examination.

Mr. Lamb: I also want an objection on the basis he doesn't name the union agreement.

The Master: I will hold that is something for cross examination.

A. Then the custom generally goes like this, that if they are 16 minutes late, a half hour is deducted.

The Master: Let's take a plant again where the shift is supposed to start at 7 o'clock, and the time clock is, say, 500 feet away from the particular employee's place of work so that it takes, just say it an arbitrary figure, say it takes two minutes to walk from the time

clock to the place of work. Then under the practices which you have observed, is the employee docked 15 minutes if he doesn't report to his position of work by 7 o'clock and does punch the time clock at two minutes to 7, or is he docked 15 minutes if he just fails to punch a time clock before 7?

A. No, what generally happens is this. The payroll department, just from looking at the time cards, decides whether to dock him or not for being late. If the fellow punches at 7 o'clock and reaches his place of work 2 minutes late, if it has annoyed the foreman, the foreman will speak to him, unless he is the kind of foreman, that is afraid to speak. I mean, there is a delicate situation in some plants. In some places, it doesn't bother the foreman so much if the fellow arrives there two minutes late. And in those cases where the 2 minutes is important, the foreman keeps that in mind in recommending transfers or promotions, things like that.

The Master: Do you have any experience or familiarity with plants working in two or three shifts per day, where they use a continuous conveyor system in production?

A. Yes.

The Master: Well, how does that work out with regard to where they change shifts, with respect to one employee leaving and another employee replacing him?

A. In the plant I have in mind, the person on the previous shift stays there until relieved, and if a couple minufes pass, and the relief hasn't shown up, that person is sent home and his foreman makes other arrangements, transfers someone from another departments, or picks up an extra.

The Master: In that type of case—

A. Once in a great while they might ask the person if they want to work a while.

The Master: In that type of case the employee might have to be in a position to work at the time the shift starts, or the previous men would be working overtime?

A. That is right. In a certain seam forge plant the

men themselves have a rule that the man on the previous shift stays there until his relief comes, and that rule has sort of been approved by the management.

Q. (By Mr. Cooper) Are you familiar, Mr. Fox, with the so-called shop rules or shop practices commonly observed in this part of the country?

A. Yes.

Q. Is there any common practice—

Mr. Lamb: There is an objection to that. I suppose what he is referring to is the city of Detroit or its environs—this part of the country.

A. That is not what I considered.

The Master: What do you mean by "this part of the country"? Define it.

Mr. Cooper: Perhaps I should ask the witness to state what he means by it.

A. I have been answering that question—I thought you meant between Pittsburgh and Detroit, and around these latitudes.

Mr. Lamb: Did you refer to Detroit plants when you testified?

A. Yes. I am referring to either Detroit or Cleveland plants.

Q. (By Mr. Cooper) Are you confining yourself to those two particular cities?

A. Well, those two cities have most—not all, but most of the large plants that I am familiar with.

Q. Is there any common practice with reference to the time when an employee is supposed to be at his place of work?

Mr. Lamb: Objection.

The Master: Overruled.

A. Yes, there is. The general practice is that he is supposed to be at his place of work at the regular starting time.

Q. (By Mr. Cooper) Do you know of any plant that considers the time worked by an employee includes all the time he is inside the plant?

A. No, I know of no plant that does that

Q. Are employees in the pottery industry generally, as you have examined plants in that industry, and particularly those employees who are production workers, are they paid predominantly on piece rates, or on hourly rates?

Mr. Lamb: Objection.

The Master: Overruled.

A. My impression is that there are a few more piece workers in the pottery industry than hourly paid workers.

Mr. Lamb: I ask that the answer be stricken. We are not interested in his impression.

The Master: That is a proper way to testify. It is overruled. It is all right, I think, with an expert witness, to testify that way.

Q. (By Mr. Cooper) Are those impressions based on your own observations?

A. Yes. The reason I put it that way is because I haven't made an actual census.

Q. Do you have any knowledge on the basis of these inspections you have made as to what is usually taken into consideration in fixing the piece rates?

A. Yes.

Q. Describe that, please.

Mr. Lamb: Objection. There can be a thousand different things taken into consideration in fixing piece rates.

The Master: Well, I will take his answer.

Mr. Lamb: It should be a specific case.

The Master: He isn't limited to a specific case. If he is an expert he can testify generally.

A. First I want to say that the practice in the pottery industry is different from the practice in industry in general only in this sense, that the things that they take into consideration have different names, but they have certain things in common.

In industry generally—and then I will describe what they do in the pottery industry—in industry generally whoever it is that is setting the piece rates wants the employee to earn a certain amount of money at the end of the week working at average speed with average skill.

The piece rate is then determined backwards by taking into consideration how many pieces the employee will be able to make after allowing for all of the various delays, and so forth, and allowing for any expenses that the employee may have in connection with his work. The idea is to arrange a rate arbitrarily based on a mythical average worker, so that the employee will earn a certain amount of money at the end of the week in net figures. That has been evidence particularly by the fact that in large numbers of plants, if the firm finds that they have been fooled as to who is an average worker, and finds that the average worker works faster than they thought he was, that they cut the piece rate.

Although the work is of the same value to them, they, nevertheless—the whole idea seems to be to have the employee earn a certain amount net at the end of the week.

In the pottery industry the same practice is followed except they take into consideration there—I mean now I am going into more detail about what they take into consideration—they take into consideration, for instance, the cost of materials used by the employee that he pays for; they take into consideration any lost time; they take into consideration the average amount of spoiled ware—that is, they don't assume any worker is perfect; they take into consideration any deductions of any sort on an average basis; they take into consideration any time that the employee must spend doing work which produces no goods; and they figure how much actual working time is left, and in that time at the arbitrary piece rate, he must produce a living wage.

Q. What is the general arrangement—

Mr. Lamb: I request that answer be stricken.

The Master: Overruled.

Q. What is the general arrangement in the pottery industry as to furnishing of such items as sponges, brushes, scissors, and other materials or tools that the employees use?

Mr. Lamb: Objection.

The Master: Overruled.

A. In the pottery industry the employees furnish those items; that is, they pay for them. In some cases they buy themselves, and in some cases the employer acts as the purchasing agent for them—sort of a store keeper.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled.

Q. (By Mr. Cooper) Do you frequently find the pottery selling such items to its employees?

A. Oh, yes.

Q. Is it customary in the pottery industry to pay a worker for crooked or chipped ware, or ware which for other reasons is imperfect?

A. The practice is to deduct—

Mr. Lamb: Objection.

A. —for that.

The Master: Overruled.

Mr. Lamb: I ask that the answer be stricken.

The Master: They deduct for that, or just fail to pay for that?

A. Both practices. It depends on their accounting system. They mean the same thing in the end.

The Master: Are you familiar with the question of whether or—the practices in other industries with regard to whether or not the employee has to furnish certain tools used in the industry? For example, let us take a tool in the machine shops. You are familiar with some machine shop practices?

A. Yes.

Q. What are the gauges the employees use to measure the diameter of the shaft, for instance?

A. Micrometers.

The Master: Micrometers. Do you know whether the employees furnish those?

A. The employees in a machine shop—the tools used by an expert machinist are always furnished by the employee.

The Master: By an expert machinist?

A. By a fellow who qualifies under the name of "machinist." In other words, one who uses tools (Tr. 2970) used in any shop, put it that way, tools of his trade. If there are expensive gauges to be used in the work which are of no use in another plant, let us say, then the company furnishes them, but if they are general trade tools, the employee furnishes them.

The Master: Well, take non-skilled work, where it is on a production line, for example, an employee, I suppose, would be using wrenches.

A. Specially shaped.

The Master: Specially shaped for the particular job?

A. Yes.

The Master: Those would be furnished by the employer?

A. That is right. But, if they are standard wrenches used by a semi-skilled worker, the employee would pay for them, and own them.

The Master: Is that the general practice?

A. That is the general practice.

The Master: Do these companies that you are familiar with have a supply in the plant where they sell them to employees, or do they go out and buy them?

A. No, in the cases I can think of right now, the employer doesn't carry them in stock, but he orders them from a wholesale hardware company for the employee, and bills the employee for whatever he pays for them, and he generally waits until he gets an order for quite a few at a time, unless it is case of an individual micrometer; in that case he orders it right away, because no other employee might request it for a year.

The Master: Does he bill the employee at the actual out of pocket cost to him, or does he mark something up for overhead, in your experience?

A. There again it varies a little bit. If there is quite a handling charge connected with it, like if there is an extended practice in regard to tools, so that there is a receiving clerk who spends quite a bit of his time at it, they

might make a small arbitrary charge there, otherwise they charge the actual out of pocket cost.

Q. (By Mr. Cooper) In making your inspections of potteries, have you ever run into anything referred to as a deduction for bisque grinding?

A. Yes.

Q. Will you describe to the Court what that is, as you have found it to exist in potteries?

Mr. Lamb: Objection.

The Master: Overruled.

A. In some plants the employee can do his own bisque grinding; in that event he—of course he cuts down the number of pieces he makes; and in other plants, by Union agreement, the employer must furnish a man to do the bisque grinding, and the employee is charged with his time. In other words, the employee—the potter pays for the bisque grinding done by the other employee, and there is a deduction made on the sheet on which they figure the piece work earnings.

Mr. Lamb: I ask that the answer be stricken on the ground there is no reference made to persons referred to—no mention made to the persons referred to.

The Master: I will wait for cross examination on that.

Q. (By Mr. Cooper) Is there any common practice as to a similar deduction for carrying boards?

A. Yes, there is.

Q. Would you describe that situation?

Mr. Lamb: I object to that, an objection at least for the record.

Q. May I re-state my question? Will you describe that situation insofar as you find it to exist as a common practice?

A. It is identical with that of bisque grinding. The potter group pays someone else indirectly through the employer, of course, for carrying the boards in order to save them time at their work, on the theory that they can get someone to carry the boards cheaper than they could do it themselves.

The Master: Well, you say it is the same as bisque grinding; you said both practices were with bisque grinding; are both practices with boards, or does the employer hire somebody else to carry the boards in all plants?

A. That depends on what the local Union does. In those plants where I found that the potters make very high wages, the union either through the—in the agreement itself or through separate grievance settlement has agreed to furnish the board carriers, and that the employees will pay for them.

The Master: Are you familiar with some plants where the employer furnishes the board carriers without deduction from the employees.

A. I don't know of any plant.

The Master: You have spoken of Unions several times; I will at least ask you this as to whether these Unions you refer to were AFL, CIO, or some other kind of Union?

A. They are AFL International.

The Master: Those are the only ones you are familiar with in the pottery?

A. Yes, all the pottery plants I have been in have AFL Union.

Mr. Lamb: May I ask him what A. F. of L. International he is referring to?

The Master: Yes.

A. Well, I am not sure about the full name. It is the Brotherhood of Operative Potters, I think, or very close to that name.

Mr. Cooper: I think that incidentally has already been covered.

Q. (By Mr. Cooper) Is it customary in a pottery plant to find decalcomania girls?

A. Yes.

Q. Are they customarily paid—

Mr. Lamb (Interposing) I want an objection on that.

The Master: Overruled.

Q. (By Mr. Cooper) Are they customarily paid at any separate rate for time spent in cutting up decalcomania patterns?

Mr. Lamb: Objection.

The Master: Overruled.

A. No, they are not. That is part of their work. The piece rate is set with that in mind, that they will have to spend some time at that.

Q. (By Mr. Cooper) As an inspector with the Wage-Hour Division, Mr. Fox, were you familiar with the policy of the division as to treatment of any odd minutes spent in the plant before or after work?

Mr. Lamb: Objection. • • •

The Master: There are two questions here. One is a question of evidence, the question whether the Administrator's policy is evidence at all, material at all in the case, whether it can be presented as evidence in the case either on behalf of the defendant or the plaintiff, to show that a particular practice followed by the defendant is a correct practice under the Act or an incorrect practice.

I would assume that the published opinions of the Administrator and instructions and matters of that sort are part of the body that the Court can look to in deciding a case, just as we can look to the Attorney-Generals' opinions, and while Attorney-Generals' opinions are not opinions of courts and they are not binding on the courts, whether or not it is admissible as evidence in the case is another matter.

Then beyond that we have the question of the best evidence rule, in that the instructions were embodied here in the form of a written instrument coming down from Washington, which may have been the result of negotiations and discussions and regional conferences or other conferences of the staff, but still the instructions that were followed were those coming from or embodied in a written letter.

It is possible the witness might know of the practices of the Administrator apart from written instructions, but

I doubt if that is relevant in this proceeding. If you had the letter here, I would be inclined to admit that, but without the letter I think there is so much doubt about it that I will exclude the evidence.

If you desire, you may have a special record made of the testimony on this subject, pursuant to Rule 43-C of the Federal Rules of Civil Procedure, so that if some other court should deem it relevant, that is, some reviewing court should deem it relevant and require the matter to be gone into, it will be unnecessary to call this particular witness back.

Mr. Cooper: I would like to ask one preliminary question, if the Court please, that I think may have some bearing here.

Q. (By Mr. Cooper) Do you happen to recall, Mr. Fox, the date of the first issuance of this inspection-field letter that you spoke of?

A. It would be in the spring—that is my memory—the spring of 1940.

Q. Whether or not prior to that time there was a written record as to the practice or policy under which inspectors operated in making inspections? • • •

The Witness: Perhaps if I gave an explanation—

Mr. Lamb (Interposing): Just a second, please. • • •

The Master (Interposing): I will take his explanation just the same.

A. (Continuing) —in Washington they had written what they call an inspection manual, which was a guide to inspectors. It outlined a procedure for making an inspection. You were supposed to examine these records first, and those records second, and look for this and look for that. Certain things were taken for granted, I suppose— • • •

A. For instance, in the—in one part of the manual it said employees must be questioned, and at that time when they wrote it it was taken for granted that the inspector would know how to question the employees, or know which employees to question, and so forth. Then when it was found that some inspectors because of lack of experience

in most cases, didn't do it the proper way, individual instructions would come out refining this manual.

Now, the same thing when it comes to counting the number of hours worked. The manual simply said "Find out how many hours were worked," that is all the manual said. So, some inspectors did some very annoying things in estimating the number of hours worked.

This letter was for the purpose of using the experience of all inspectors to get some uniformity in the matter of counting the number of hours worked.

The Master: Well, I think with his explanation I will adhere to my same ruling. I think the explanation indicates that there were a variety of practices followed by individual inspectors and there was no instruction from Washington which covered the matter clearly before this letter came down. The letter was obviously the result of negotiations and conferences, but at the same time the instructions were embodied in the letter.

I will make a special record of this under Rule 43-C by holding it not admissible unless you get that letter.

Mr. Cooper: Could I ask a few more questions before I make a separate record here, your Honor, just to obtain a ruling on the main record, and I think I can be very rapid about it.

The Master: All right.

Q. (By Mr. Cooper) Mr. Fox, when you were an inspector with the Wage-Hour Division, in connection with making inspections did you take occasion to talk to employees? • • •

A. Yes, (Tr. 2971) employees were interviewed on all inspections.

Q. Do you know whether or not, say, in the year 1939 other inspectors of the Wage and Hour Division operating in the Ohio and Michigan region did the same thing?

Mr. Lamb: Objection.

A. I know that of my own knowledge.

Mr. Lamb: Just a second, until we dispose of the objection.

The Master: I don't see that it does any harm one way or the other; I will take his answer.

A. Of my own knowledge, I know that all inspections the inspectors interviewed varying numbers of employees.

• • •

Q. (By Mr. Cooper) And what was the purpose of these interviews with employees? • • •

A. To substantiate the records of the company.

Q. (By Mr. Cooper) With respect particularly to what? • • •

A. Yes. Employees were interviewed to find out if the hours recorded by the employer were the hours actually worked, if the pay received as shown by the records was the pay actually received by the employees, and they were also interviewed to find out if there were any practices of the company which were not reflected in the records.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled.

Mr. Cooper: Now, on the separate record, if the Court please, I would like to ask Mr. Fox whether, as an inspector with the wage and hour division, he was familiar with the policy of the division as to the treatment of the odd minutes spent in the plant by employees either before or after work.

Mr. Lamb: There is an objection. First as to the incompetency, and secondly, the inability of this witness to testify as to the administrator's policies, and thirdly the fact that this witness is not competent as a representative of the wage and hour division to testify as to their policies.

The Master: I will sustain the objection, but I will take the evidence pursuant to Rule 43-C.

Mr. Lamb: Is it necessary under this rule for me to state an objection to each question?

The Master: No, I don't think so, because your objection has been sustained. • • •

A. Yes, I was familiar with that.

Q. (By Mr. Cooper) What was that customary practice?

A. The practice was to find out what time the employee actually started to do some work in those cases where the time clock card was punched ahead of the regular starting time, and the same procedure for the punch in the evening. The inspector was to find out whether the employee had actually done any work after the regular quitting time in all cases where the clock card was punched 15 or 20 minutes after the regular quitting time. In other words, we were told to make no assumptions that merely because it was punched, it was worked. We were told to find out.

Q. Was that the practice during the time that you were with the division?

A. Yes.

Q. Do you know whether or not that is still the practice of the division?

A. I have good reason for knowing that that is the practice.

Mr. Cooper: Now, I would like to go back on the regular record, if the Court please.

The Master: All right.

Mr. Lamb: I want the record to show that there has been an objection to the preceding testimony, and the request is made that there is a motion to dismiss any such evidence from consideration by the Master or the Court.

The Master: The record will so indicate.

Mr. Lamb: As this will not be the subject of cross examination, I want to state at this time that the plaintiffs deny that that practice is in effect, or ever has been in effect, or the witness' relation of the administrator's policies is a correct one.

The Master: Well, you can cross examine on that matter within the ruling that has been made, that it is to be taken as a special record. Perhaps I ought to stop now to give you a chance to cross examine on that, or you can cross examine after you complete your regular cross examination.

Mr. Lamb: I don't want to make competent what the Master ruled is incompetent.

The Master: That is up to you. I don't want you to assume I am preventing you from cross examining.

Mr. Cooper: Off the record.

(Discussion off the record.)

Q. (By Mr. Cooper) Do you know, Mr. Fox, whether or not there are any large number of plants which do not use time clocks at all in computing hours worked?

Mr. Lamb: Objection.

The Master: I will overrule that.

A. In my experience, there is only one plant of over 200 employees that didn't use time clock cards, and that was a refining company. • • •

Q. (By Mr. Cooper) By the way, are you a member of the bar?

A. Yes. Ohio Bar.

Q. Does the Industrial Advisers Bureau operate under any particular arrangements with the various plants that it inspects?

A. Yes, we have a yearly contract with all of the plants.

Q. Let me ask you whether or not in making a contract wi... a plant which is retaining the services of your organization there is any stipulation as to confidential or non-confidential treatment of information which comes to you respecting a particular fact in a particular plant?

A. Yes.

Mr. Lamb: Objection.

The Master: I will take the answer. It may not be binding upon the court. I don't know.

A. In some cases, it is necessary to state it in that many words, that their affairs are their own affairs, and their name will not be used except with their permission.

Mr. Cooper: That concludes the direct examination, your Honor.

Cross Examination

By Mr. Lamb: • • •

Q. What is your business address?

A. 714 N.B.C. Building, Cleveland, Ohio.

Q. 714 N.B.C. Building. That is the address of the Industrial Advisers Bureau, Incorporated?

A. That is right.

Q. And are you the sole person connected with that, or are there others?

A. No. We employ about 35 people.

Q. And do you furnish labor spies?

Mr. Cooper: Objection.

A. We do no labor relations work whatsoever.

Mr. Cooper: I think it is highly immaterial.

The Master: What was the answer? He has already answered it.

A. We do no labor relations work whatsoever. • • •

Q. (By Mr. Lamb) This is an Ohio corporation, is it, this Industrial Advisers Bureau, Incorporated?

A. That is right.

Q. Are you an officer of it?

A. No.

Q. An employee?

A. An employee.

The Master: What is your position with the company?

A. I am in charge of the wage and hour service.

Q. You are getting paid for testifying today, are you?

A. Yes.

Q. By whom?

A. By the law firm of Beaumont, Smith & Harris.

Q. With which Mr. Cooper, who appears at this counsel table, is associated?

A. That is right.

Q. How did they happen to get in touch with you, Mr. Fox?

A. As I understand it, I was recommended to them by another lawyer in Toledo. • • •

A. No, he never mentioned Mt. Clemens Pottery, or Beaumont, Smith & Harris' name to me.

Q. Didn't you say you got in touch with Beaumont, Smith & Harris because of Mr. Block?

A. No, here is what happened; some time previously I had some business with Henry Block that had nothing to do with this case. Some time after that I received a letter from Beaumont, Smith & Harris, and Beaumont, Smith & Harris told me that this Toledo attorney had recommended me.

Q. And do you know that Mr. Block and Mr. Cooper are attorneys for the Manufacturers Association?

A. No.

Q. Did you advise Mr. Block that you were testifying in this case?

A. No.

Q. Now, you said that you had five or six potteries, knowledge of five or six potteries that your firm represented?

A. That is right.

Q. Will you give us the names of the potteries that your corporation represents?

Mr. Cooper: We object, if the Court please. • • •

The Witness: I have no objection in giving the names of the potteries.

The Master: The potteries in particular are very closely related to this case, since it is a case that involves potteries, and I will require him to divulge the names of the potteries.

Mr. Nunneley: The witness says he has no objection to that on the potteries.

A. My only objection was just to giving the name of any client.

The Master: When you get into the names of other clients, ay be too remote. But he says what he is interested n is the potteries. So will you give us the names of the potteries? • • •

A. There is the Scio Pottery Company. • • •

Q. Whereabouts is that located?

A. Scio, Ohio.

Q. And do you have a contract with the Scio Ohio Pottery Company?

Mr. Nunneley: Objection. The Court has ruled that out. It doesn't make any difference whether he has. • • •

The Master: What chance did you have to observe the Scio, Ohio Pottery Company?

A. I spent several days there at different times. I had a chance to observe everything I wanted to know about the observation.

Q. (By Mr. Lamb) When did you do that?

A. What was the question?

Q. When did you have those several days there?

A. Once, about a year ago, and then about three weeks after that, about three months after that, then at the end of another three months.

Q. So I take it you didn't have occasion to see it as an inspector of the Wage and Hour Division? • • •

A. No.

Q. (By Mr. Lamb) In what capacity were you acting in making this observation? • • •

A. Both as an employee of Industrial Advisers Bureau and as adviser to the company. • • •

Q. (By Mr. Lamb) What other companies in the pottery business do you have contact with and knowledge of?

A. The Cronin China Company. • • •

Q. Where is that located?

A. Minerva, Ohio. • • •

A. As an employee of Industrial Advisers Bureau and as an adviser to the Cronin Company.

Q. Both of those companies are located in Ohio, did you say?

A. Yes.

Q. Have you any experience with pottery companies in Michigan?

A. No.

Q. I didn't ask you whether you had observed the em-

ployment relationships existing at the Mt. Clemens Pottery Company.

A. No, you didn't ask it.

Q. Have you ever visited the Mt. Clemens Pottery Company?

A. No.

Q. You are not able to tell us what time the employees start to work after they have punched the time clock?

A. No.

Q. And you are not able to tell us whether or not the employees punch their—take off their coats and hang them up, and hats—

A. (Interposing) I have answered that question.

Q. Just a second. And, you haven't observed whether or not the employees take off their coats and hang them up in the cloak room, take off their hats and hang them up in the cloak room, and prepare themselves for work before punching the time clock at the Mt. Clemens Pottery Company?

A. No.

Q. Do the employees in your experience in these industrial companies that you have referred to, where they have a situation such as that that you have outlined, where employees may appear a half-hour before the regular starting time, in those companies can you advise us whether or not they take off their coats and visit a cloak room, and so forth, prepare themselves for work prior to beginning their productive labors?

A. They do. • • •

The Master: First, I would like to get this clear as to whether it is the witness' testimony—is it your testimony that in the plants you have had occasion to observe the employees take off their hats and coats and put on whatever uniforms they have to put on and get themselves ready for production work after punching the time clock?

A. In some plants, yes, and in some, no. It depends upon whether the lockers are ahead of the time clock or in back of the time clock. • • •

Mr. Lamb: Went into the cloak room and prepared themselves for productive work prior to punching the time clock. I am asking this witness if he can point to a plant in the City of Detroit, or in Mt. Clemens, Michigan, where the employees prepared themselves for productive work by visiting the cloak room prior to the time they punched the time clock.

The Master: You are speaking now only—that means visiting the cloak room.

Mr. Lamb: That is right. * * *

A. Well, I recall of one.

Q. (By Mr. Lamb) What is that?

A. Detroit Ball-Bearing Company.

Q. Now, tell us what your observation about that is.

A. They hang up their coats there--they hang up their coats and then they punch the clock and then go to work.

Q. Have you seen that? * * *

A. I have never been in a plant in Detroit where I observed with my own eyes the practice of hanging up their coats before punching the time clock.

The Master: Have you observed some where they punch the time clock and then hung up their coats?

A. Yes. * * *

Q. (By Mr. Lamb) I don't want to limit this to Detroit, but I want to include the entire State of Michigan. Do you know of any situation where the employees have hung up their coats and visited the cloak rooms and hung up their hats, and so forth, prior to punching the time clock? Anything that you have observed?

A. Yes.

Q. What plant was that?

A. Norwalk Truck Line.

Q. Norwalk Truck Line?

A. Yes.

Q. Whereabouts is that located?

A. Detroit.

Q. Detroit?

A. And Lansing.

Q. That is a hauling outfit, is it?

A. Yes.

Q. In that case the employees visit the cloak room and hang up their hats and then punch the time clock, is that right?

A. That is right.

The Master: Is that in the Detroit plant or the Lansing plant?

A. Both.

The Master: So is that firm an exception to your former statement that you hadn't personally observed any plants?

A. I hadn't remembered—I mean, it takes quite a while to start reviewing all the companies.

The Master: I can understand that.

A. I thought of the Lansing one first, and then I was reminded of the Detroit observation.

The Master: You have observed that in Detroit?

A. Yes.

Q. (By Mr. Lamb) Do they have a productive line there, or will you tell us any company that you have observed in the Detroit area or Mt. Clemens, Michigan, area, where there is a productive line or a production line, where the employees take off their coats and visit the cloak rooms and hang up their coats and hang up their hats, and so forth, prior to punching the time clock?

A. I can't think of any.

Q. As I understand it, you have never even seen the Mt. Clemens plant, have you?

A. That is right.

Q. That is, of the Mt. Clemens Pottery Company; is that correct?

A. That is right.

Q. And you have no knowledge of whether the employees there take off their coats and hats and visit the cloak room and prepare themselves for productive work prior to punching the time clock?

A. I have no such knowledge.

Q. And you haven't any knowledge of the instructions of the company with reference to the time an employee shall report to work; have you?

A. I have no such knowledge.

Q. And you haven't any knowledge of whether or not the company the day prior to the working day advises the employees to report at 14 minutes of seven or 14 minutes of six or any other particular time, have you?

A. I know nothing of my own information about the operations of the Mt. Clemens Pottery.

Q. And having—not having such knowledge, of course, you have no knowledge of its kinship with practices in other potteries or in other plants?

A. Naturally.

Q. Is that correct?

A. That is correct.

Q. You have no such knowledge, is that correct?

A. That is correct.

Q. Do you have knowledge whether this Mt. Clemens Pottery Company has any Union agreements?

A. I don't have any personal knowledge of it.

Q. And so you can't advise us whether the practices followed by the Mt. Clemens Pottery Company are similar to those of companies that do or do not have union contracts, is that correct?

A. That is correct. * * *

Q. (By Mr. Lamb) Now, you gave some testimony this morning relative to time employees are compensated for in certain industries. Did you base that knowledge just on your capacity as an employee of this Industrial Advisers Corporation, Inc.?

A. No, it wasn't based only on that experience.

Q. What other experience did you base that knowledge or testimony on?

A. Also on my experience as a federal inspector for the Wage-Hour Division. * * *

The Master: Did you base your testimony as to the

practices you followed in payment of time to employees by employers upon any court decisions, among other things?

A. No.

Q. (By Mr. Lamb) Well, are you familiar with any court decisions on this very important matter of the time that employees should be paid for?

Mr. Cooper: I object, it seems to me we are getting pretty far afield. * * *

The Master (Interposing) I think so. If this witness was coming in here to tell what the Ohio law is, because foreign law has to be proved, as a matter of fact, and he is testifying as a lawyer, you would certainly be subject to cross-examination as to all the relevant Ohio decisions, and what he knows about them, what his interpretation of them is, but here I don't think he is testifying as to a question of law at all. He stated he wasn't basing his answers upon any court decisions. He might never have read a court decision and still might be able to testify as to the practices. It may turn out the practices are all illegal and contrary to some court decision, in which case the court decision would govern, but I don't think it is proper to question this witness about his knowledge of the law and cases, and I will so hold.

Mr. Lamb: May I make a proffer of the testimony of what this witness would say, if he were permitted to answer?

The Master: Yes, you can make any statement you wish on that.

Mr. Lamb: The witness, if permitted to answer, would testify he did not know about the decisions in the Federal courts covering this situation involving the payment required by employers to employees for time spent on the premises of the employer or in the employer's employment.

Also this witness would admit that he has no knowledge of the law or the administrator's ruling covering the subject of requirement of employers to pay employees for

time on the employer's premises under the employer's direction.

Q. (By Mr. Lamb) I take it you are not able to tell us how far the employees of the Mt. Clemens Pottery Company are located from the time clock?

A. I know nothing about the employees of the Mt. Clemens Pottery Company.

Q. So you wouldn't be able to tell us, would you, whether the employees of the Mt. Clemens Pottery Company take off their coats and hats, prepare themselves for work and then punch the time clock and within a minute thereafter are engaged in productive work for the employer, Mt. Clemens Pottery Company?

Mr. Nunneley: We object to the question as being, first, a repetition— • • •

A. I have no personal knowledge of the practices of the Mt. Clemens Pottery Company.

Q. (By Mr. Lamb) So you wouldn't be able to tell us whether or not the employees followed that practice in the Mt. Clemens plant, would you?

A. No.

Q. And not knowing the practice of the employees of the Mt. Clemens Pottery Company in that respect, you would not be able to say whether that practice was the same or different from that followed in other potteries or other plants, would you?

A. No.

Q. Are you familiar with the practice of the Mt. Clemens Pottery Company in regard to selling employees or charging employees for materials such as sponges, pails, gloves, scrapers, and so forth?

A. I have no personal knowledge of the activities at the Mt. Clemens Pottery Company.

Q. Now, having no personal knowledge of the practice followed by the Mt. Clemens Pottery Company in charging its employees for any of these articles you wouldn't, therefore, be in a position to advise, as to whether that practice is the same or different from that

followed in other plants and potteries or other industries, would you?

A. No.

Q. Do you have any knowledge about the method of write-up on articles sold by the Mt. Clemens Pottery Company?

A. I have no personal knowledge of the activities of the Mt. Clemens Pottery Company.

Q. So that you wouldn't, therefore, be in a position to advise us whether the practice of marking up the products sold to the employees of the Mt. Clemens Pottery Company is similar to or different from that practice followed in other plants that you may have testified about, would you?

A. No.

Q. You are not in a position to say whether it is true or not that the Mt. Clemens Pottery Company has a uniform rule of marking up its products sold to employees on the basis of 33 1/3 per cent increase over the cost price, have you?

A. I know nothing about it.

Q. And you have no knowledge of the amount of profit which the Mt. Clemens Pottery Company derive from the sale of its products such as gloves, pails, sponges, and so forth, to its employees?

A. I know nothing about that.

Q. You don't say, or mean to infer that you have ever talked to the employees, or any employees of the Mt. Clemens Pottery Company, relative to whether or not they have been reimbursed for the time actually spent on productive work, have you?

A. No.

Q. And it is a fact that you have never talked to any employees of the Mt. Clemens Pottery Company to determine whether or not the Mt. Clemens Pottery Company pays the employees for the time actually spent in the employer's service?

A. That is a fact.

Q. This morning you testified that the payroll de-

partment in some plants that you know about, looks at the time clock cards and decides whether or not to dock the employee. Would you care to advise us what companies you observed that practice followed in?

A. I think I was particular about what I said they docked them for. I didn't say they just docked them.

Q. You said when they were late, is that correct?

A. That is right.

Q. Now, will you advise us what companies that you have personal knowledge of, wherein the payroll department looks at the time clock cards and decides whether or not to dock the employee?

A. Yes, I can give you the name of some companies.

Q. If you will, please?

A. White Motor Company.

Q. White Motor Company, in Cleveland?

A. Yes.

Q. Okay, any other?

A. Michigan Steel Castings Company, of Detroit.

Q. Michigan Steel Castings Company. Now, could you advise whether that little job of docking the employees is done as the result of any advice you may have given to the company?

A. No, it is done as a result of the Union contract.

Q. Which Union are you referring to in regard to Michigan Steel Castings Company?

A. Which Union?

Q. Yes.

A. I don't know the Local number.

Q. Would you tell us what the union is?

The Master: As to whether it is a CIO or A. F. of L.

Q. (By Mr. Lamb) Would it have been the UAW-CIO?

A. I think it is.

Q. All right, and the White Motor Company also?

A. Yes.

Q. Has a contract with the UAW-CIO, is that correct?

A. That is correct.

Q. Now, did you say, or do you say that you ever gave any advice to that effect?

A. No, no, I found those things in effect.

Q. Did you advise any employees, where you found such a situation in existence, as to their rights on the wage-hour law?

A. Oh, yes.

Q. Did you advise them that it is up—

Mr. Nunneley: Did you say the employees?

The Master: Is that what you meant?

Q. (By Mr. Lamb) Did you advise any employees?

A. Yes.

Q. Can you refer us to the section of the wage-hour law, wherein an employer is given the right to make what you call a docking from the payroll of the employees for being late, or for any other reason?

A. Yes.

Q. Will you give us the section of the law?

A. Section six.

Q. And would you tell us what particular part you have reference to?

A. It says the employer shall pay to each of his employees who is engaged in commerce or the production of goods for commerce, a wage at the rate of at least 30 cents an hour for this year.

Q. Well, now, this is interesting. You say as a person who came over here to testify about this law—

Mr. Nunneley: He didn't come over here to testify about the law.

Mr. Lamb: Well, it is evident he hasn't too much experience with it, but, do you say section six of the Fair Labor Standards Act of 1938, gives the employer the right to make such docking as he or his payroll department may determine, as long as the compensation paid to the employee, for a 40-hour work week, amounts to an excess of 30 cents an hour?

A. It is my opinion.

Mr. Nunneley: The question calls for a legal opinion, and it is not a proper subject of cross examination.

Mr. Lamb: I am asking that this part of his testimony,

the question and answer be saved, I want to have it marked where I can get it.

You say it is your opinion that as long as an employer pays an employee a minimum wage for a 40-hour work week, that he can make such docking from the payroll of the employee as he or his payroll department may determine, is that correct?

A. No. • • •

Q. (By Mr. Lamb) You said you found few differences in the practices followed in respect to computing time of the Mt. Clemens Pottery Company and that followed in other pottery companies. Have you had an opportunity to observe the various records and methods of computation and other supporting evidence wherein the Mt. Clemens Pottery Company makes computations of time worked by employees? • • •

A. Yes, I said I examined a sprinkling of time cards. Picked at random.

Q. (By Mr. Lamb) Of the Mt. Clemens Pottery Company?

A. Of the Mt. Clemens Pottery Company.

Q. And compared it with time cards of other companies? • • •

A. And that the extensions in the right-hand margin of the elapsed time worked seemed to be computed in the same manner that they were in other potteries, and in other plants generally.

The Master: That is my recollection of what he testified to.

Q. (By Mr. Lamb) Now, what other potteries are you referring to?

A. Well, the two I gave you, for instance. Do you want some more?

Q. The Corono China Company, is that one of them?

A. That is one of them.

Q. Now, what I am interested in knowing, is what your personal knowledge of the Mt. Clemens method of computation is. Did you observe all of the records by which the company makes its computation of the cards?

A. No, all I saw was some time cards picked at random. I saw the time that was punched on the cards. I saw the extension in pencil or read crayon in the right-hand margin. That is all I saw.

Q. Did you observe what the company does in regard to down time?

A. No.

Q. Where for lack of materials the employees were required to stand at their machines?

A. No.

Q. Are you familiar with the practice—

A. I gave you the sum total of my knowledge.

Q. Just a second. Are you familiar with the practice of the Mt. Clemens Pottery Company in that respect?

A. No.

Q. Are you familiar with the practice of the Mt. Clemens Pottery Company when employees report at varying times, instead of, we will say, at 7 o'clock each morning, that they report at 6 one morning, 8 the next morning, 6:30 the following morning? Are you familiar with the practice in that respect?

A. On some of the cards I looked at, the employee did not report, very obviously, at the same time each morning.

Q. That is right. Now, did you notice the practice of the Mt. Clemens Pottery Company in that respect?

A. I know what the punch in time was, the punch out times, and I noticed what the extension was.

Q. Did you notice that irrespective of what time of the day an employee punched the time clock, whether it was 11:33, or 6:18, any practice in respect to paying the employee only from the succeeding quarter hour? Did you notice that practice?

A. I noticed that there were some cases where, if an employee had punched in after 6:30, say at 6:49—or 6:43, or 6:40, that very obviously the extension must have included the time from 6:45.

Q. Did you notice the time cards where the employee checked in at 6:46 each day for several weeks?

A. No, I don't remember that—

Q. Did you notice what the practice was in that respect?

A. I don't remember any 6:46. There seemed to be more 6:50's than anything else.

Q. That is your opinion? How many cards did you see?

A. Oh, maybe 30.

Q. Did you see any cards of employees who checked in at 6:46 every morning for several weeks?

A. No, I didn't. I said I only examined 30 cards.

Q. Are you familiar with the practice of the company that if an employee did check in at 6:46, that the company would only pay him from 7 o'clock?

A. I have no knowledge of that. • • •

The Master: There is no—we might as well inform the witness—there isn't any dispute about the practice that was followed by the Mt. Clemens Pottery Company; they paid from the succeeding quarter hour when the time clock card was punched in the morning, to the preceding quarter hour punched out at noon and the same practice was followed out in the afternoon.

A. If I can accept that as a fact, I can answer questions on that basis.

Mr. Nunneley: Your Honor means they compute time from that.

The Master: I mean they compute time from that; I don't know just how I worded my statement.

Q. (By Mr. Lamb) As I understand it, you haven't from any personal knowledge certainly qualified yourself to testify as to how long it takes an employee in the Mt. Clemens Pottery Company, after punching the time clock, to be fully engaged in production work, have you?

A. I know nothing about the Mt. Clemens Pottery Company.

Q. And you know nothing about the practice of the employer in advising the employee to report at a specific time, and to start work at a specific time in the day, have you?

A. At what company?

Q. The Mt. Clemens Pottery Company?

A. No.

The Master: We will take a recess.

(Recess.)

Q. (By Mr. Lamb) Mr. Fox, I just had occasion to talk to one of your former superiors. Were you dismissed from the wage and hour division as an inspector, because you falsified certain records?

A. No.

Q. You say you were not discharged from the wage and hour division because you falsified your civil service application?

A. No.

Q. You say you were not so notified by the division?

A. That is right, I was not.

Q. Your answer is that you were not discharged from the wage and hour division because you falsified these records?

A. That is my answer.

Q. When did you leave the wage and hour division?

A. October 16, 1940.

Q. And you did not receive a notice from the wage and hour division, Mr. Aaron Cohen, or other officials of the Cleveland office of the Wage and Hour Division, because you falsified your civil service application?

A. I did not receive such notice.

Q. Orally or in writing?

A. Orally or in writing.

Q. Have you testified as an expert in the Federal courts of Detroit before?

A. No.

Q. Now, as I understand your testimony, you do not wish this court to understand that your statements in reference to any practice of the Mt. Clemens Pottery Company is based on any personal observation?

A. I stated before I have no personal observation of the practices of the Mt. Clemens Pottery Company.

Q. And it is not your intention in view of the fact that you have no personal knowledge of the practices of the

Mt. Clemens Pottery Company to lead this court to understand that its practices are similar to those in other plants in this or other industries, is it?

A. I am not trying to compare the Mt. Clemens Pottery with any other pottery.

Q. Or other plants?

A. Or other plants. I can add to that my testimony is confined to things that happened in industry exclusive of the Mt. Clemens Pottery.

Q. Of course, you don't intend to lead this Court to understand that in the absence of knowledge of what the practices are in the Mt. Clemens Pottery Company, that those practices would be the same as in the other plants of which you spoke?

A. For all I know of it personally, the practices in Mt. Clemens might be the same as they are in other plants.

Q. And they might be different, is that correct?

A. They might be different.

The Master: I think that is nailed down pretty clearly now.

Mr. Lamb: I think so.

The Master: I think I will restrain any more questions along that line. • • •

CHARLES E. DOLL, SR., was thereupon recalled as a witness herein, and having been previously duly sworn, testified as follows:

Direct Examination (Continued)

By Mr. Cooper:

A. Your Honor, before I begin my examination, I was reading over the transcript of my testimony on Friday, and I want to correct just one place in there where I made an error as to numbers. I stated that the number of people going through the time clock "A" at any one time

was approximately 300. I should have said approximately 200.

The Master: That is the 7 o'clock shift, that is, the 7 o'clock shift is the big shift?

A. The 6 o'clock shift.

The Master: Or, the 6 o'clock shift is the shift where the most goes through.

A. That is right.

The Master: Approximately 200.

A. That is right; I said approximately 300; I should have said approximately 200; it was my error.

The Master: Have you consulted some records to refresh your recollection?

A. No, I realize it when I read it over.

Q. (By Mr. Cooper) I think when the examination was terminated the other day, Mr. Doll, you were discussing the geographical area in which the employees of the pottery live. Have you had occasion to observe approximately what area the employees do reside in?

A. Our employees live within the County of Macomb, which would mean that they are drawn from practically any part of Macomb County, which would mean that they may come from right in the city of Mt. Clemens, they may come from distances 5, 10, 15 to 20 miles away.

Q. Have you observed how they come to work?

A. The majority of them come doubled up, or come as near as possible with a full car, picking up—the person running the car picking up others as he or she makes the trip.

Q. That is, most of them arrive in automobiles?

A. Yes.

Q. And ordinarily a number of employees in a car?

A. That is correct.

Q. And what has been your observation as to what time of day these automobiles arrive with reference to the starting time?

Mr. Lamb: Objection.

The Master: Overruled.

A. They will arrive any time from an hour before starting time up to within a few minutes of starting time.

* * *

Q. (By Mr. Cooper) Are there many of them that arrive just a few minutes before starting time?

A. A smaller number arrive shortly before starting time.

Q. Now, have you had occasion to observe whether or not it is a matter of frequent occurrence for employees starting at different times to come to the plant in the same car?

Mr. Lamb: Objection.

The Master: It is a rather leading form of question, I think. In the first place, do you know whether employees starting work at different times come in the same car to the plant?

A. It frequently happens, your Honor, that people who will not be starting work until 7 o'clock will ride in with someone in the shift that is starting at 6 o'clock. * * *

Q. Is there a distinction between dinner ware and other types of pottery, Mr. Doll?

A. Dinner ware refers definitely to articles used for eating purposes on the table. Other types of pottery can consist of art goods, ornaments, sanitary items. There is quite a long range of goods that come under the general term of "pottery," but dinner ware refers specifically to table ware items.

Q. Which type of pottery does the Mt. Clemens Pottery Company make?

A. We manufacture popular-priced line of dinner ware exclusively.

Q. About what percentage of the dinner ware production in the United States is represented by the production of the Mt. Clemens Pottery Company?

A. About 12 per cent.

Q. Do you know how the other 88 per cent of the dinner ware industry operates, as to labor contracts?

Mr. Lamb: Objection. * * *

The Master: Well, I will take his answer.

A. Nearly all of the remaining 88 per cent operate under collective bargaining agreement with the National Brotherhood of Operative Potters.

Mr. Lamb: I will ask that the answer be stricken.

The Master: I will let it stand.

Q. (By Mr. Cooper) Did the Mt. Clemens Pottery Company ever have a collective agreement with that Union? • • •

A. Yes, with the National Brotherhood of Operative Potters, previous to 1921.

Q. (By Mr. Cooper) Is the company operating under a collective agreement now, Mr. Doll?

A. It is.

Q. Did you have anything to do with the negotiation of that contract?

A. I did.

Q. In the negotiation of that contract, Mr. Doll, what if anything was said as to the method of computing hours worked?

Mr. Lamb: Objection.

The Master: It does seem to me that the question that you objected to that Mr. Lamb asked Mr. Doll on his cross examination was whether or not the company was engaged in collective bargaining with its employees. It is either relevant—it is either proper on both sides or on neither side. • • •

Mr. Cooper: Let me for the present, then, withdraw that question, if the Court please, and go on.

Q. (By Mr. Cooper) Do you know, Mr. Doll, whether or not any CIO Union is the bargaining representative for employees in any dinner ware pottery in the United States?

Mr. Lamb: Objection. That is immaterial.

The Master: He may answer.

A. There are no CIO unions represented in any of the dinner ware potteries in the United States.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled. • • •

Q. (By Mr. Cooper) Do you recall, Mr. Doll, when the wage and hour law so-called went into effect?

A. In October, 1938.

Q. Prior to that how many hours a week had the pottery being operating normally?

A. We were basically on a 45-hour week.

Q. Was any change in the basic operation put into effect after October, 1938? • • •

A. When the law first went into effect in 1938 providing for a 44-hour work week there was—well, basically we had to, and did, adopt the 44-hour week, yet it made a very little change in our operation because previous to that time very few employees had been working the full 45 hours.

Q. (By Mr. Cooper) Was there subsequently any further reduction in the number of hours of normal operations?

A. In October, 1939, we reduced our basic work week to 42 hours, and in October, 1940, we reduced our basic work week to 40 hours.

Q. Did this have any effect on the number of employees in the pottery?

A. It did have an effect up until 1940 in making it necessary to put on additional employees.

Q. Did the increase in the number of employees necessitate the putting in of any extra equipment?

A. In certain departments it did.

Q. How much did that amount to, Mr. Doll?

A. You mean in dollars and cents?

Q. Could you state it relatively to indicate to the court whether it was something of a substantial nature or otherwise, any items of machinery that had to be added?

A. Most of our large items, large mechanical items, connected with production, had a certain amount of reserve capacity in them which we were able to utilize. It did involve in a way of minor incidental machines and incidental pieces of equipment around the plant some extra investment. • • •

Q. (By Mr. Cooper) Was the matter of reducing

hours a handicap to the company so far as costs of production are concerned?

Mr. Lamb: Objection.

The Master: I will take his answer.

A. The coming in of the 40-hour work week necessitated much closer control of employees' time to keep them within the statutory period than what it had previously been.

The Master: In that respect, then, it increased costs of production?

A. It did not throw us into increased cost of production, because during that period our business was on the increase anyhow. It had been growing each year, and any increases that might have come from the shortening of the work week were fairly well absorbed by the additional amount of business being done.

Q. (By Mr. Cooper) Are employees of the company paid according to the number of hours that they are at work or on the basis of how much production they turn out?

A. 98 per cent of our people are paid on the basis of a production turned out under the piecework system.

Q. Would it be a handicap or a matter of additional cost to the company if an employee who punched in between 7:01 and 7:15 were treated as having started work at 7 o'clock?

Mr. Lamb: Objection.

The Master: I will take his answer. I am not sure I fully understand the question.

A. No, it would not increase the company's cost. • • •

(A newspaper picture was thereupon marked Defendants' Exhibit 84.)

Q. (By Mr. Cooper) Mr. Doll, do you have a water tower on the premises of the Mt. Clemens Pottery Company?

A. We do.

Q. Does that tank have a sign painted on it?

A. It did.

Q. And how does the sign read?

A. How did the sign read?

Q. How does the sign read at the present time?

A. At the present time the sign reads: "Mt. Clemens Pottery Company."

Q. How did it formerly read?

A. Previous to June, or for a number of years previous to June, 1941, the tank read: "Mt. Clemens Pottery Company. Owned by S. S. Kresge Company."

Q. And who, if you know, ordered the painting on the sign to be changed?

A. I did.

Q. Did you have any orders or instructions or requests to do that?

A. It was done entirely on my own responsibility.

Q. Can you say, Mr. Doll, whether Exhibit 84 is a correct picture of the language on the sign as it read during the period involved in this action?

A. Exhibit No. 84 is exactly the way the sign read previous to June, 1941.

Mr. Lamb: Was there any writing on the opposite side of the sign?

A. There is none, never has been any.

Mr. Cooper: If the Court please, I offer Exhibit 84 in evidence, the picture. • • •

The Master: I think they can use newspaper pictures of the water tower if the witness can identify the water tower having the appearance shown in the picture. I don't think this part of the exhibit entitled "CIO News" or the statement underneath is admissible. I admit it simply to show the water tower, and nothing else. • • •

Q. (By Mr. Cooper) Have you ever had occasion, Mr. Doll, to make any study as to the amount of time lost during the day by a worker time lost from work?

• • •

A. Yes.

Q. (By Mr. Cooper) What was the occasion?

A. At various times in connection with the establishment of piece work rates. It has been such times as that.

Q. What sort of procedure would be used in making such a study?

A. The procedure would be based upon an actual study and observation in the various departments as to the daily habits and method of operation and conduct of the various employees. • • •

Q. On the basis of your own observation now, can you state what is the average amount of time not worked during working hours per day?

Mr. Lamb: Objection.

The Master: This is apart from any study that may have been made with a stop watch, you mean, just general observation?

Mr. Cooper: Yes, your Honor. • • •

The Master: I will overrule the objection with that understanding.

A. My observation and study of this matter indicates that the employees take out between 25 to 30 minutes in the course of an ordinary work day. • • •

Q. (By Mr. Cooper) Are there certain 24-hour operations at the pottery, Mr. Doll?

A. Yes. • • •

Q. (By Mr. Cooper) Could you say whether or not the pressmen in the slip house, the boiler firemen and the kiln firemen are engaged in 8-hour shifts?

A. They are.

Q. And how many shifts a day?

A. 3 shifts a day.

Q. How many days a week, sir?

A. The pressmen are 5 days a week, the boiler firemen are part of the year on 7 days a week and part of the year during the summer season on 5½ days. The kilns are on 7 days a week.

Q. When they are on the 7 days, how many hours does each employee work during the week?

A. There is a basic work week of 40 hours. • • •

Q. (By Mr. Cooper) Have you been out in the plant and observed what happens at the time of the changes of shift in these departments?

Mr. Lamb: What departments, these kilns?

The Master: Any of the three-shift departments, I understand.

Mr. Cooper: Any of the three.

A. Well, you take in any of these departments where one shift is taking over at the expiration of the working time of the other shift, the men on the shift just coming in enter the department, go through the usual procedure of changing their clothes, getting ready their personal belongings, sitting around and talking, frequently they will engaged in conversation with the shift that is still working, and the shift that is just about to complete its day's work, of course remains in charge of the operation until the expiration of their time, when the other shift takes hold and assumes the responsibility of the job.

Q. How many men work, make up a crew among the pressmen in the slip house?

A. The pressmen and the mill chargers, who work together, make up a crew of four on each shift.

Q. Now, from your own observation, Mr. Doll, can you say whether or not it would be possible for a crew coming in, say, at 7 o'clock, to be working at the same time as the crew whose operations were finished at 7 o'clock?

A. It is not possible for them to both—both crews to be working at the same time on any of these operations.

Q. Are you speaking now of the pressmen in the slip house only?

A. No, I am referring to the pressmen, the mill-chargers, the boiler firemen and the kiln operators. • • •

Q. (By Mr. Cooper) How many days a year does the pottery operate?

A. The pottery is in operation 365 days a year.

Q. And 24 hours a day?

A. In certain places.

Q. And how long has this been true?

A. This has been true ever since we have had tunnel kilns.

The Master: Are the operations on the kilns the only operations that continue all hours of the day and night throughout the year?

A. That is correct, with the exception of the operation of the boilers during the cold and cold weather seasons.

Q. How many years would that go back, Mr. Doll?

A. To 1920.

Q. And has the pottery been in steady operation from that time right up to the period involved in this law suit?

A. It has been steadily. • • •

June 23, 1942

CHARLES E. DOLL, SR., was thereupon recalled as a witness, being previously duly sworn, testified further as follows:

Mr. Lamb: I will call this witness for further cross examination.

Cross Examination (Continued)

By Mr. Lamb: • • •

Q. (By Mr. Lamb) Mr. Doll, when your son, Charles E. Doll, Jr., testified here last week, he was going to produce, or have you produce, the invoices covering the purchases of materials sold to the employees. Do you have that with you now?

Mr. Nunneley: No agreement was made to produce anything here.

The Master: I thought a search was going to be made.

Mr. Nunneley: The question was whether records were kept. • • •

The Master: Mr. Doll, you are familiar with the entire record keeping system of the Mt. Clemens Pottery Company?

A. I am.

The Master: Do you have any records, any summary records showing total sales of items of equipment that are sold to the employees?

A. We do not.

The Master: Would there be any way, any kind of records that you have from which such a statement could be prepared, except these computation sheets from which you prepared the record of deductions from the pay of Dorothy May?

A. Your Honor, the amount involved in this whole proposition of sales to the employees is such a small item that we do not keep separate records. The invoices are charged to factory operating expenses when they come in and we do not attempt to segregate the portion of these invoices that may finally result in sales to the employees and the parts that are used in ordinary factory operations, and consequently the only record that is available would be to go through a whole year of work sheets, take off from the entire year's work sheets the total amounts that had been charged as deductions to employees.

That would simply show the extent of the total deductions, the same as was done in the case of Dorothy May, on which an exhibit was introduced.

The Master: Well, as to your records of purchases of supplies, do your ledger sheets separate purchases into a definite category such as sponges—

A. (Interposing) No, sir, those things—all small items of that kind simply are charged into factory supplies.

The Master: And will you name the things that the factory supply account covers?

A. Well, our total factory supplies account consists of many items that do not enter into sales to employees, as well as the items that do enter into it.

For instance, all items of small tools bought for maintenance purposes go into factory supplies. Many types of brushes that are not sold to employees, for instance all the brushes that are used in the bisque ware room in brushing the ware, as has been heretofore described, go into factory expense.

The Master: Factory expense.

A. Factory supplies and expense; that is the general term of the account, and—

The Master: Let me ask you this, if you have a variety of types of equipment purchased, some of them machines, some of them tools, and brushes, and so forth, would the machines you buy come under the heading of factory supplies and expenses?

A. Oh, no.

The Master: The only things that come under that are the more or less small miscellaneous items of equipment?

A. Exactly, brooms for sweeping the floor, brushes, and there are a multitude of items that come up daily that have to be purchased for the operation of a plant of that kind, and even there the total aggregate in relation to the amount of business done by the company, after you bunch them all together, under the general heading of factory supplies, is a very small item of the total expense of the business.

The Master: You don't have any segregation of factory supplies of the different classes at all, is that the idea?

A. Not in classifications; they all come under the general heading of factory supplies, and they are charged to that account.

The Master: Have you any idea what percentage of the volume of factory supplies cover purchases to employees and what percentage would cover other items of equipment purchased by the plant that are not sold to the employees?

A. I would say that of the total value, cost value of the factory supply account, that an outside figure, which would be more than liberal, would be that not in excess of 10 per cent of the total—

The Master: Would be sold to employees?

A. Exactly.

The Master: Well, I guess the only way the deductions from employees could be determined, then, would be through these computation sheets. It might be pos-

sible to go through those sheets with three or four selected employees picked at random just to get some idea of the amount of deductions; that has been done with one employee.

Mr. Lamb: May I ask a question?

The Master: Yes.

Q. (By Mr. Lamb) Mr. Doll, how do you list the income which you receive from the sale of the supplies, materials which you sell to your employees—

Mr. Cooper: I object to the form of that question.

Q. —in your financial statement? • • •

A. As a matter of fact, there is no income derived from purchases for and sales of supplies to employees. That particular operation is definitely handled at a loss, despite the fact that some of the items there may be a small percentage of overhead added to the cost. The entire volume of these sales is absolutely trivial, and because of being so trivial there is no effort made to segregate it, keep a record of it or keep track of it in any form other than in the deductions shown from the employees' accounts.

Q. What I am trying to find out from you, Mr. Doll, is how do you list on your financial statement, which you say you are familiar with, that item representing the amount deducted from the employees' pay checks for these supplies, or the monies received from the employees for supplies sold them by the company? How do you list that item?

A. There is no separate listing made of it.

Q. If there isn't a separate listing, where do you list it with any other item?

A. The loss that results from the operation is reflected in the final balance sheet of the company, the same as any other miscellaneous items of expense would show up.

Q. You have said that on some items there is a slight— or a profit representing possibly a mark-up or overhead. Where do you list that item of profit or overhead charged?

Mr. Nunneley: He didn't say there was a profit on any item.

The Master: I don't think he said "profit."

Mr. Lamb: He didn't today, but he has before.

The Master: He said a mark-up.

Mr. Nunneley: He didn't say it any time.

The Master: Is there a profit on any items, any single items?

A. There is nothing added to any items that adequately covers the cost of handling them and the details connected with providing this convenience for the employees.

The Master: The witness denies that there is a profit made on any of the items. If you want to re-frame your question in terms of mark-up or overhead charge, all right.

Q. (By Mr. Lamb) All right, I will ask you that question, to advise us where you include in your financial statement that item that you refer to as a mark-up?

A. Is there a question?

The Master: Yes, read it back, reporter.

(Question read.)

A. As I previously stated, there is no specific item in our financial statement to cover a trivial thing of this character, but it is simply reflected in the final figures as to the profit or loss of the company's total operations.

* * *

Q. Can you advise me, Mr. Doll, whether you have any written contract or any written document signed by employees authorizing the deductions from the payrolls for these articles which are charged to their account?

A. We have no written agreement.

Q. You said the other day that the amount of the sale of articles other than sponges amounted to not more than $1,000 a year?

A. I said that would be a high figure.

Q. And now have you, or will you tell us what the total amount that has been charged to employees for sponges,—what that amounts to per year?

A. I couldn't give you an exact figure, but I think I would be very liberal in my estimate if I said that it did not exceed $2,000, $2,500.

Q. Well, now, as I understand it, the amount which you receive which you say is not more than $2,500 for sponges, and some not more than $1,000 for articles sold the employees other than sponges, I don't have clear in my mind where you list as a profit or loss the item represented by the sale of those articles to your employees. Some articles you say you have a mark-up on; some you may take a loss on. How and where do you list those profits or losses?

Mr. Cooper: If the Court please, I think this is either the third or fourth time this question has been asked.

The Master: I wonder if we can get at it this way: you stated on the expense side, when you purchased these supplies, the cost is entered in the item of factory supplies and expense?

A. That is correct.

The Master: Now, when you sell these items to the employees you derive a revenue therefrom, whether it represents a profit or loss, when you figure your revenue against your expenses, is that not true?

A. That is right.

The Master: Where do you list that revenue that you derive from the sale of the equipment?

A. As I previously stated, the same items are used in other portions of the plant for other purposes and, consequently, the detail of attempting to segregate the amount used by the company and the amounts that are supplied to the employees is so very trifling and the bookkeeping involved would be so intricate to attempt to go through a debit and credit system for the division of the items that no attempt is made to do that, and that they are simply left to be absorbed in the general expenses of the business.

The Master: I understand that statement, that you make no segregation, you group the expenses involved in the purchase of these supplies with the expense involved in the purchase of other supplies in the business. I think it is clear in my mind what you do so far as entering the cost of these items is concerned. But, then, when you

turn around and sell the items of equipment to the employees you must list the revenue derived therefrom under some heading even if it is grouped in with our revenues. Now, just what heading is that?

A. It is just—it would just finally get into your profit and loss account.

The Master: Well, in your profit and loss account you have two columns, do you not, expenses and revenue, or debits and credits, or whatever you call them?

A. Debits and credits.

The Master: Debits and credits. You have told us in what category you list the expenses. I understand in this profit and loss statement you have one item consisting of factory supplies and expense, is that right?

A. That is correct.

The Master: Now, all of the items of equipment that *you purchase*, the amounts paid therefor go into that item along with items that are purchased and not re-sold to employees, is that right?

A. Yes, sir.

The Master: Well now, when you sell this equipment to the employees you derive some revenue therefrom. Where is that revenue, where does it show up in your profit and loss statement? Can't you name the item in which it appears?

A. It is deducted—the items are deducted from the employees' settlement, but there is no separate entry made of it.

The Master: In other words, it is a deduction from wages paid to the employees, consequently doesn't show up as an item of revenue?

A. That is correct.

The Master: In other words, on your profit and loss statement you just list the net wages paid to employees and do not list gross wages and a statement of deductions therefrom?

A. That is correct.

The Master: Well, I think that clears it up in my own mind. I don't know whether it does in yours, Mr. Lamb. You may ask further questions if it is not clear.

Q. (By Mr. Lamb) Do I understand that, for instance, if on Exhibits 45 and 46 you deduct more from the wages of employees or charge the employees more than those articles represented by Exhibits 45 and 46 cost the Mt. Clemens Pottery Company, in that event you enter that as a profit item in your profit and loss statement, but if there should be a loss on the sale of any article or overcharge, then and in that event you would list that as a loss item in your books of account, is that correct?

A. The average operation of the making of these sales, it finally gets into the profit and loss statement.

The Master: They don't figure a profit and loss directly on these sales and then enter that in the profit and loss statement. As I understand it on the expense side of the ledger the expense of purchase of these items is entered, and then on the revenue side of the ledger there is no item directly showing the amount realized on the sale to the employees because the sale to the employees is not a sale that brings in cash, but is taken care of by a deduction from the employees' wages and the net wages would simply be entered, so it is indirectly taken care of?

Mr. Cooper: May I make a suggestion at this point, if the Court please?

The Master: Yes.

Mr. Cooper: The language has been used here as showing a deduction from wages. I wonder if the Court has in mind whether it is a deduction of wages or deduction from a payroll account?

The Master: I don't want to get into an argument over terminology; it is a deduction from the amount paid to employees; whether it is a deduction from wages or payroll account.

Mr. Cooper: I wanted to clear that up.

The Master: We were just trying to locate where that

item would appear in the balance sheet in the profit and loss statement.

Q. (By Mr. Lamb) This would be safe to say, wouldn't it, Mr. Doll, that your company has not listed in its income tax report the profits received from the sale of articles to your employees?

Mr. Nunneley: We object to that. It is immaterial what is in the company's income tax report. I don't know why we should go into that.

The Master: I will take the answer, but, again, I am going to give him an opporunity to answer in his own way.

A. It is impossible to have any item of gain or loss in a business that is not finally reflected in your profit and loss account from which your income or lack of income is derived.

The Master: Mr. Doll, are any of these items that are sold to the employees ever sold for cash.

A. No.

The Master: Where an employee would come in and pay 10 or 15 cents sometimes for his item of equipment?

A. I don't think that ever happens. I think you could liken this proposition to the amount of expense we put into making, over the course of the year, literally thousands of dozens of pieces of ware that some employee finally drops on the floor and breaks into many pieces. We do not keep an itemized cost of the loss involved in all those pieces of ware dropped by employees on the floor, but they finally—the loss resulting from them finally shows up in your profit and loss account there as a destruction of both material and labor.

Mr. Lamb: I would like to have the witness produce the invoices representing the purchases of materials sold to employees of the Mt. Clemens Pottery Company.

The Master: Do you have the invoices covering the purchases of the supplies, factory supplies and expense for this period?

A. We haven't any particular period we know what

items, some of which are sold to employees, the same as I previously submitted some invoices when I was on the stand last February. I showed some invoices then. How much of those total invoices were sold to employees and how much were used for just ordinary purposes around the plant, I am not in a position to say. We have no record of it.

The Master: Do you have the invoices of that type that you produced covering this period, even though they cover a broader purchase of supplies than supplies sold to the employees?

A. I can produce individual invoices of items sold, as I did before, the same as at that time I was asked to produce invoices covering certain items which were identified as gloves. I was asked to produce those and did produce them. If there are any similar items specified, I can produce invoices along similar lines to identify them with payroll deductions.

Mr. Lamb: My knowledge up to this point of the articles sold to the employees includes gloves, pails, scrapers or scrappers, sponges.

The Master: Scissors.

A. I think these invoices, to be of any value, should be identified with specific payroll deductions, the same as was done before.

The Master: Would you have all of the invoices in this particular account of plant supplies or factory supplies and expense? Would you have those in a separate file?

A. They are in the regular voucher file of the company. Many of them, in fact the big majority of them have no relation whatever to the matter of anything sold to employees.

Mr. Lamb: I think we are entitled to the invoices for the materials which they sold to the employees. Obviously we are not particularly interested in this question as to invoices for other materials. • • •

The Master: Suppose you pick out, or have somebody

in the plant go through this invoice file and pick out some invoices covering each of these five classes for illustration, at least, and bring them down and show them to Mr. Lamb and see whether or not that will answer the purpose.

A. I can do that. • • •

Q. When you said, Mr. Doll, yesterday, that you had observed some employees take off as much as 20 or 25 minutes a day from actual productive work, did you mean to refer to any particular employee on any particular day that you have knowledge of having taken off, as much as 20 or 25 minutes from actual physical productive work?

A. I was speaking of the average condition throughout the plant.

Q. So that you didn't mean to refer to any particular employee in any particular department on any particular day?

A. I did not. • • •

Q. You were referring to your labor practices in reference to practices in other pottery companies. Can you advise us of any other pottery companies that have had as many strikes as you have had in the last—since October 24, 1938?

A. No, I do not know of any others. • • •

Examination

By Mr. Cooper:

Q. Mr. Doll, what is the reason for paying an employee with checks or drafts that must be cashed at The First National Bank of Mt. Clemens?

A. The reason is due to conditions that developed quite a number of years back and first came into practice at a time when we had several bank failures in Mt. Clemens, and after these banks closed up or for a period of perhaps a couple months afterwards, various payroll checks came filtering back through, and we, of course,

made the checks good, but it resulted in a double loss, that is, a loss of the funds already in the bank, or the partial loss of those funds that had been provided for the payrolls, and the amount we paid out in making good on the checks.

The second thing was that in keeping the office records as to the return of the checks given to employees, these checks would not come back frequently for several months, due to the fact that the check may be given to a garage owner or a gas station operator in payment of a gasoline bill, he would stick the check in his pocket, maybe carry it around for quite a while and eventually turn it over to his supplier or to the County Treasurer in payment of taxes. But, anyhow, the checks would be moving around Macomb County or other sections of the State of Michigan for quite some long period before they would finally get back to us. It necessitated the records being kept open. Besides that, the checks would come back in a very dilapidated condition, and in order to safeguard against the bank condition as well as insure the earlier return of the checks and the return of them in better condition, this policy was adopted. It has been in effect for many years and has never been objected to by employees. • • •

Q. (By Mr. Cooper) Do I understand, then, Mr. Doll, it was sometimes a matter of several weeks after a check had been given to an employee before it was presented at the bank for cashing?

A. You mean previous to the time we adopted the present system?

Q. Previous to the time you adopted the present system.

A. It would sometimes be several months before we would get it back.

Q. And were there instances wherein in the meantime the bank had closed?

A. Yes. We lost considerable sums through bank failure in making good these payroll checks. • • •

Q. (By Mr. Cooper) This morning, Mr. Doll, you were explaining to the court the accounting system of the Mt. Clemens Pottery Company in so far as it applied to this matter of reflecting on your books the sale of certain supplies to employees. I am not sure that the record shows clearly the question or, rather, your answer to the question which was asked as to whether or not after such an item of the supplies is sold it is reflected as a deduction from a certain account. Could you explain that a little more fully?

A. It shows on the work sheets as a payroll deduction.

Q. Is there an account on your books known as a payroll account?

A. There is.

Q. And any deduction for bookkeeping purposes incurred in connection with the sale of supplies to employees would be a deduction from the payroll account, is that correct?

A. That is correct.

Q. Do you also have in your records an item or account known as gross wages?

A. That is a record that is shown on the earning cards.

Q. And with reference to these supply items, how are the gross wages computed?

A. The gross wages are the amount of the payroll that is credited to each worker after deduction has been made for any supplies purchased.

The Master: What are net wages, then, if you have such an item?

A. You might—our net wages would represent the amount of money the employee drew after from the gross wages you had taken off Social Security and insurance.

Mr. Lamb: Any supplies that are sold to the employees?

The Master: He states the supplies were taken out before the gross wages were computed.

Q. (By Mr. Cooper) Now, a number of questions have been asked, Mr. Doll, with reference to payments made to employees for imperfect pieces. Could you summarize the practice of the company as to what pieces which, although they have been made, are not paid for so far as the employee is concerned because of some imperfection or breakage, or something of that sort?

A. The employees are paid for the ware, or credited on to their payroll accounts for the ware when it is accepted in the clay state; that is, after it is ready to go into the kilns for the first burning. They are paid in full for the ware at that time, and, consequently, whatever happens to the pieces after that up to the time of shipment is—in the way of loss or imperfections—is borne entirely by the company.

Q. You were asked this morning, Mr. Doll, whether there was any written agreement with employees covering the sale of supplies to them, and I believe you answered that there was no written agreement. Is there any record written up at the time of the sale of an item of supplies to an employee?

A. The employee signs a receipt for the article charged to him.

The Master: Is that always done, or is that an occasional practice?

A. That is the rule. There might be an occasional instance where an employee, as a matter of convenience, might ask the foreman to get the article for him.

Mr. Lamb: I don't want to interject my own question at this point, but I wonder if the Master would ask what the practice was when finishers received sponges, for instance, who signed for them.

The Master: All right, I will ask that.

A. When sponges were being charged to the jigger men, the finishers signed the jigger men's name.

The Master: I guess that question has been covered in considerable detail in the past in the record. • • •

Q. (By Mr. Cooper) I think you have testified, Mr. Doll, that prior to the filing of this action there had been no

strike at the Mt. Clemens Pottery Company since 1923, is that right?

A. That is correct.

Q. There was no strike, then, from 1923 until what?

A. Until April 14, 1941.

Q. And what happened at that time?

A. At that time a strike was pulled at our plant by the Local 1083-CIO.

Mr. Lamb: Is that what has been referred to as the first strike, April 14, 1941?

A. That is correct.

Q. Did you have another strike during the year 1941?

A. There was another strike on November 24, 1941.

Q. How many strikes were there at the Mt. Clemens Pottery Company during the year 1941?

A. There were two strikes.

Q. Do you know of any other pottery company which had that many strikes during the year 1941?

A. I do not.

Q. Do you know of any other potteries where the CIO called a strike during the year of 1941?

A. I do not know of any such instances. • • •

Q. (By Mr. Cooper) Do you know, Mr. Doll, of any other pottery plant in the United States in which the CIO was carrying on an organizational campaign in the spring of 1941?

Mr. Lamb: Just let the record show an objection. I don't care to be heard on it.

The Master: All right, I will take the answer subject to the objection as to materiality.

A. To my knowledge there were no other organizational campaigns being carried on among potteries in 1941 by the CIO.

The Master: Of course, this is true, that most of those other potteries were organized by the AFL already?

A. That is true. • • •

Q. (By Mr. Cooper) Was Local 1083 of the United Pottery Workers of America, affiliated with the CIO, at

tempting to organize the employees of the Mt. Clemens Pottery Company on April 14, 1941?

Mr. Lamb. There is an objection.

The Master: Same ruling; you may answer.

A. They were carrying on an organizational campaign among the employees in 1941.

Q. (By Mr. Cooper) Can you state, Mr. Doll, whether or not, either at the time of the first strike in April, 1941, or at the time of the second strike in November, 1941, or in conjunction with either strike a demand or request was made by any worker or group of workers based on the company's regular method of computing hours worked?

Mr. Lamb: There is an objection. In fact, there are several grounds for the objection, but I assume it only goes to Mr. Doll's personal knowledge of objections that may have been made to him.

The Master: Yes. Any objection they may have made to him or that he knows of of his own personal knowledge. Obviously he can't testify as to what is beyond his personal knowledge.

Mr. Cooper: That is right.

The Master: And while I think this has already been asked, I will permit it to be asked again. Will you answer?

A. No such demands were ever made either upon me or upon the company.

Mr. Lamb: I ask that the answer be stricken.

The Master: I will let it stand.

Q. (By Mr. Cooper) Was the plant of the Mt. Clemens Pottery Company closed down at the time of this second strike in November, 1941?

A. When the—

Mr. Lamb: (Interposing) Objection.

The Master: You may answer.

A. When the strike of November 24, 1941, was called, it involved only a small minority of the employees, and the plant remained in steady production.

The Master: That goes beyond the question. Just

answer the question as to whether the plant was closed down at any time.

A. The plant was kept in operation.

The Master: I will strike the other answer.

Mr. Nunneley: I don't know why the other answer should be stricken.

The Master: I am adhering to the rule here that the answer should be responsive because otherwise, after the question of the propriety of the questions has been argued out, if the witness were not restricted, we might get into a lot of matters that have been eliminated either by agreement or by ruling.

Mr. Cooper: In view of the Court's ruling, I want to address another question to the witness.

Q. What proportion of the company's employees went out on strike in November, 1941?

Mr. Lamb: Objection.

The Master: That is not very far from the other question; you may answer.

A. You say I may answer?

The Master: Yes.

A. About 15 per cent.

Mr. Lamb: I ask that the answer be stricken. . . .

SUMMARIZE FROM LINE 14, PAGE 3059, THROUGH LINE 17, PAGE 3070, AS FOLLOWS:

"Exhibits 84, 5A-MM, 2 A-C, 6 A-C, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 36, 37, 38, 39 A-AA, 40, 41, 42, 80 A-C, 85 A-B, 86 A-C, 87 A-C, 88 A-C, 89, 89-A, 90 were received in evidence. The witness marked on Exhibit 90 the location of the Pottery (by the letter 'P') and the downtown section of Mt. Clemens (by the letter 'X')."

WILLARD C. STIEF, was thereupon called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Cooper:

Q. Where do you live, Mr. Stief?
A. I live in Mt. Clemens.
Q. Your street address is what?
A. 158 South Wilson Boulevard.
Q. Do you work for the Mt. Clemens Pottery Company?
A. Yes, sir.
Q. When did you start working for the pottery company?
A. 1922.
Q. And what was your job when you were hired in 1922?
A. I was hired as a ceramic engineer.
Q. And what was the nature of your work during the period from October, 1938, until April, 1941?
A. Well, my duties varied considerably. I supervised the making of the glaze that was applied to the dinner ware, and the firing of all the kilns of the plant and supervising the quality of the ware passing through the plant and I was foreman on a section of the glost belt.
The Master: You mean you did all of these things at the same time, or you did them successively?
A. During the course of the day.
Q. (By Mr. Cooper) And did you spend a portion of your time every day supervising the operation of some part of the glost belt?
A. That is correct, a portion of my time every day was spent on that.

Q. Did you confine yourself pretty much to some particular geographical part of the belt, or would you be pretty much up and down and around the department during the course of a day?

A. Well, I personally had charge of the men who unloaded the saggers from the cars and the boys who took the ware out of the saggers, which constituted about 25 employees.

Q. And whether or not during the day you would have occasion to see not only these particular employees, but other employees in the glost belt department?

A. I would have occasion to supervise the workmanship of the other employees, too.

Q. Was there any normal or regular starting time for the glost belt department?

A. Yes, we set 7 o'clock the normal production starting time.

Q. Would you usually be at the plant by that time?

A. Yes, I generally arrived at the plant by about ten minutes of 7 in the morning.

Q. And on the basis of your observation, what time did production work on the glost belt system begin?

Mr. Lamb: Objection.

The Master: Overruled.

A. It began at 7 o'clock.

Q. (By Mr. Cooper) Did production work on the belt ever begin before 7 A. M.?

A. No, definite production work didn't start before 7.

Mr. Lamb: Objection.

The Master: Overruled.

Q. Was there anything which was done before 7?

A. Well, on Monday mornings we would have some of the men come in to get the saggers in position so that the other people, the majority of the other people on the belt could start to work.

Q. Was this Monday morning practice followed throughout the period from October, 1938, to April, 1941?

A. It was.

Q. Do you recall whether there was any change in the standards under the wage-hour law in the year 1940?

A. Why, in October, 1940, we established a 40-hour working week.

Q. Did that make any difference in the operations of the glost belt?

A. Well, we arranged our production to be finished at 40 hours.

Q. Starting at that time, were certain employees required to come in earlier on Monday mornings?

A. On Monday mornings, the men who unloaded the saggers and the men who took the ware out of the saggers, they came in 15 minutes to 7.

Q. Did that include all the men in the glost belt department?

A. No, that is just a small portion.

Q. And that was true subsequent to October, 1940?

A. Before October, 1940? What was the question?

• • •

Q. By subsequent to October, 1940, Mr. Stief, I mean after October, 1940?

A. Yes, after October, 1940, that was our practice.

Q. Was that also the practice before October, 1940?

A. No, it wasn't the practice before.

Q. Have you ever observed employees in the glost belt department arrive in that department earlier than 7 in the morning, and I am leaving this Monday question out of consideration now. Aside from this practice that you have described under which certain employees came in 15 minutes early on Monday mornings, aside from that what is your observation as to what employees did when they arrived in their department earlier than 7 o'clock?

A. Well, the older employees would generally go to their stations that they would work at, and sit down until 7 o'clock and rest, or a group of them close by would get together and talk before 7 o'clock. The younger fellows would generally go where there was a group of girls, and talk to the girls before 7 o'clock.

The Master: What time would they start coming in in the morning?

A. Well, they would start coming in any time after 15 minutes to 7.

The Master: What time would they start arriving in the department? Do you mean any time after fifteen minutes to 7:00?

A. Yes. After they have a chance to walk to the department.

Q. (By Mr. Cooper) And what was the normal working day in the glost belt department during this period from 1938 to 1941?

Mr. Lamb: Objection.

The Master: He may answer.

A. The normal working day was from 7¾ to 8 hours.

Q. What would that variation depend on, Mr. Stief?

A. Depend upon the amount of production we were putting through that particular department.

Q. Would you keep the glost belt running until such time as you had finished up with all the production work that there was, or was there any particular practice with reference to turning off the switch and stopping production at night?

A. We would turn off the switch at the closest quarter of an hour, of 7¾ to 8 hours.

Q. Was it always on an even quarter-hour?

A. Always on an even quarter-hour.

Q. That the switch would be turned off?

A. Yes.

The Master: Who turned off the switch?

A. The foreman of the department.

The Master: Is that you or someone else?

A. It was the other foreman.

Q. (By Mr. Cooper) Would everyone working on the belt stop working at the same time at the end of the day?

A. No, there was a few fellows that were sweepers and cleanup men would stay around longer.

Q. And, if you know, what arrangement if any was made as to their compensation?

A. They were paid on an hourly basis.

Q. Do you know whether or not they were paid on an hourly basis for their work in cleaning up around the belt after production was stopped?

A. That is what they were paid on.

Q. Aside from these cleanup men, would everybody else be through work at the same time?

A. They would be through work at the same time.

Q. And when would that be?

A. That would be on the even quarter of an hour.

Q. Now, did some employees in this glost belt department follow a practice of punching out the time clock at the end of the day and then come back in and do some more work?

A. No, they didn't do that.

Q. Mr. Stief, did you ever give instructions to any employee as to when he should punch in the time clock in the morning?

A. No, excepting that our starting time was 7 o'clock, to be there before 7 o'clock.

Q. Was there any limit as to how much before 7:00 they could punch in the time clock?

A. No, there was no limit, excepting that not before the quarter of an hour previous to 7:00.

Q. Is it your testimony, then, that they could punch in the time clock at any time between 14 minutes to 7:00—

A. (Interrupting) That is right.

Q. (Continuing) —and 7:00?

A. That is right.

Q. Do you know whether or not an employee who started work at 7 o'clock would be premitted to punch in, say, at 16 minutes to 7:00?

A. No. Well, we would ask them not to. • • •

Q. Suppose that somebody punched in the time clock at 16 minutes to 7:00 in the morning, Mr. Stief, and then punched out the time clock at 15 minutes to 12:00 at noon, and the company was going to figure up how many hours that employee had worked that morning. Now, are you familiar with the practice that would be followed in

figuring up that employee's time? If he punched in the time clock at 16 minutes to 7:00 would his hours of work start at a quarter to 7:00 or at 7:00?

A. Quarter to 7:00.

Q. Did you attend foremen's meetings, Mr. Stief?

A. Yes, sir.

Q. How frequently were they held?

A. We held them once a week.

Q. Was Mr. Charles E. Doll, Sr., present at those meetings?

A. Yes, he was generally present.

Q. Did he ever discuss the matter of the wage and hour law at those meetings?

A. Yes. We discussed that law very thoroughly.

Q. And, in a general way, what would Mr. Doll have to say about the wage and hour law?

A. Well, he cautioned us to abide by the length of work week, and our plant's production was adjusted to the length of week in a general way that the law provided for.

Mr. Lamb: Objection. That is a conclusion.

The Master: That is a pretty broad conclusion. You asked him as to what Mr. Doll said at the meetings. Will you restrict yourself to what Mr. Doll said, rather than what you did, and I will strike that latter part of the answer.

A. Well, we adjusted our--for instance, after October, 1940, when we had a 40-hour week—

The Master (Interposing): Just a minute. You are talking now about what you did. What did Mr. Doll say at these meetings with reference to the wage and hour act? • • •

A. Well, he discussed the Act and how it affected our working conditions in the plant, of the length of week, and we would adjust our production to the length of work-week in effect that the law had in effect at that particular time.

Q. Do you recall what the number of hours of straight time worked per week was permitted after October, 1940?

A. It was a 40-hour week.

Q. Was anything said by Mr. Doll at the foremen's meetings as to the number of hours that employees in the glost belt department would be permitted to work in any one week?

Mr. Lamb: I object to it on the ground it is leading.

The Master: Well, he has asked the general question before. I will let him call attention to any particular angles which Mr. Doll might have said. • • •

A. We would adopt the 40-hour week, and that was a statement that he would explain to us to try to finish our—the production through the department in a 40-hour week.

The Master: I think that statement is fair; I will let it stand. I myself thought this other statement was not going to be proper testimony, but I wanted to wait until I got the full statement before ruling on it.

Q. (By Mr. Cooper) Do you recall an employee or former employee by the name of Nick Dacko?

A. Yes.

Q. Do you happen to recall what his job was when he was first hired by the Mt. Clemens Pottery Company?

A. He ground bats and was used as a utility man wherever he was needed.

Q. About how long, roughly, was he on the job being a bat-grinder, if you remember?

A. I wouldn't remember.

Q. Do you think it would be a matter of more or less than a month?

A. I would say from 3 to 5 months.

Q. During this period when Dacko's job was that of a bat-grinder, did you have any occasion to observe whether or not he spent practically all of his time grinding bats?

A. No, he didn't spend all of his time grinding bats, he did other work besides grinding bats.

Q. Did you ever have occasion to give Dacko any instructions as to what procedure he should follow when he came into the plant in the morning?

A. Yes, when he came into the plant in the morning his instructions were to hesitate at the position of the

glost belt at 7 o'clock to get his orders whether he should work at that position or whether he should go back and grind bats?

The Master: Who was he to get those orders from?

A. Get them from me.

The Master: When did you give these instructions to him?

A. At 7 o'clock.

The Master: Well—

A. (Interposing) Or a few minutes after seven.

The Master: Were these instructions repeated on a number of occasions, I mean when did you begin the instructions, not as to whether he was to grind bats or work on the glost belt, but when did you give these general instructions about his coming and hesitating?

A. That was at the very beginning of his employment.

Q. (By Mr. Cooper) Do you recall whether or not during this period that Dacko was employed as a bat grinder he did ordinarily stop in the glost belt department at 7 o'clock in the morning and ask for instructions as to what job he should start on that day?

A. Sometimes he would and sometimes he would go back to the department where he ground bats and started immediately on grinding bats.

Q. Could you give the Court any idea as to how frequently during this period Dacko would be called away from the bat-grinding job and put on some other job?

A. Well, he would be called three or four—three times a day at least.

Mr. Cooper: That concludes the direct examination.

Cross Examination

By Mr. Lamb:

Q. When Mr. Dacko was in your employ, the employ of the Mt. Clemens Pottery Company, you say that he hired to do bat-grinding and general utility work?

A. Of that department.

Q. I see. Well, now, is bat-grinding a piecework job?

A. No.

Q. The people that work on bat-grinding are paid on an hourly rate rather than piecework?

A. Hourly rate.

Q. And the work of a general utility man would also be on an hourly rate rather than the piecework rate, is that correct?

A. Yes, sir.

The Master: Answer out loud, please.

A. Yes, sir.

Q. (By Mr. Lamb) You didn't tell us how many employees were in the glost belt department.

A. The whole department?

Q. Yes.

A. Approximately 100.

Q. Did you advise us, or will you advise us, whether on this glost belt there is any kind of a clock which records the time the glost belt started operation?

A. You mean an automatic device to determine—

Q. Yes.

A. No, there is no automatic checking device for the time.

Q. So when you say that on certain occasions the belt started at 7 o'clock, you had a chance to see it start and that is how you recollect now, that it did start at 7 o'clock on these days?

A. That is right.

Q. Then you were telling us about Mr. Doll's speeches to your foremen's meetings, and that he advised you about the Wage and Hour law, is that correct?

A. That is right.

Q. And that your employees were covered by the Wage and Hour law, is that correct?

A. That is right.

Q. Did he say that all of the employees of the Mt. Clemens Pottery Company were covered by the Wage and Hour law and that you men should be governed accordingly? • • •

A. All the employees.

Q. (By Mr. Lamb) How many foremen would attend the meetings on Tuesday that you have referred to as being addressed by Mr. Doll?

A. Approximately all the foremen.

Q. Would you give us some notion?

A. Well, I think there was 28 to 30.

Q. 28 or 30?

A. Yes.

The Master: Did you punch a time clock, Mr. Stief?

A. No.

The Master: I take it none of the foremen did?

A. No.

The Master: You said you got to the department about 10 minutes to 7:00. Was that a regular time that you got there every morning or were you just averaging it about the time you got there?

A. That is the average.

The Master: You sometimes got there a quarter to 7:00?

A. Sometimes at 6:30.

The Master: Sometimes at five minutes to 7:00?

A. Yes.

Q. (By Mr. Lamb) But you have certain functions to perform in getting the machinery ready or getting work in shape so that the employees could proceed immediately with their work?

A. Not in the part of the department that I supervised.

Q. What did you do when you arrived, for instance, a half-hour before 7:00? What did you do in that interim to prepare for the day's work?

A. Generally I would be called to supervise some of my other duties other than the glost belt.

Q. But occasionally on the glost belt, too?

A. Not at that time.

Q. I can't understand you. You say not at that time?

A. Not at 6:30 in the morning.

Q. I see. Well, any time between 6:30 and 7:00?

A. No.

The Master: You didn't have anything to do before 7:00?

A. No.

The Master: In the glost belt department?

A. No.

The Master: Or, that is, on the glost belt?

A. That is right.

Q. (By Mr. Lamb) Then when it came 7 o'clock, what did you have to do on the glost belt?

A. Well, the first duties at that time was to look over the department to see that every position was properly manned, that the personnel was present.

Q. Did you have the function of instructing any of the employees in your section of that department as to the time when they should appear the next morning for work?

A. No.

Q. Now, did you advise employees to be there 14 minutes of 7:00 rather than 15 minutes of 7:00?

A. No.

The Master: Answer out loud, please.

A. No.

Q. (By Mr. Lamb) You know, as a matter of fact, don't you, Mr. Stief, that employees in that department or employees in other departments did not report at 15 minutes of the hour, but at 14 minutes of, and from 14 minutes on to the hour, don't you?

A. State that question again.

Q. Do you know that the employees reported at 14 minutes to and from there on up to 7 o'clock, for instance, but never at 15 minutes to 7, don't you?

A. That is right.

Q. And certainly never at 16 minutes of?

A. That is right; yes, sir.

Q. Well, as a matter of fact, if an employee arrived, for instance, at 10 minutes of 7 you were charged, were you not, with advising him that he was late?

A. No.

Q. You say you had just about 25 employees in your section of the department, is that correct?

A. That is right.

Q. Were those mostly girls or men?

A. They were all boys and men.

Q. Do you have any other persons who work in that particular section of the department other than those on the saggers or on the glost belt itself?

A. No, not in that department.

Q. Don't you have an operator who arrived earlier, more or less to see that the machinery was in proper working order?

A. No, sir.

Q. Did you have a man in that section of the department who would take the water off of the glaze or perform any of those functions?

A. No, sir. * * *

Q. (By Mr. Lamb) Now, you said that on Monday mornings men would come in to get saggers put into position; that is, they would come in some time before 7, is that correct?

A. That is right.

Q. Could you give us the names of some of the men, or was that true of all the men?

A. They came in at 15 minutes to 7, the men who unloaded the saggers from the cars, and took the ware out of the saggers.

Q. Now, would you give us the names of some of those men?

A. Martin Kukuk.

The Master: Would you spell that?

A. K-u-k-u-k.

Q. Yes.

A. Elmer Glefke, Norman Almstatt.

Q. Any others?

A. I just can't recall them.

Q. May I give you a list of employees represented in this action, and ask you if you will quickly glance through

that and give us the names of some persons who (handing document to the witness)?

Mr. Nunneley: Names of what? What is the question?

The Master: The question is the names of the persons who came in Monday morning in this glost belt department.

Mr. Lamb: That is right.

The Master: Go down this list from the beginning, and if you see any of the employees who came in early on Monday morning to do that job, why, just name them as you find them. Can you read the writing?

A. Yes, I went over that. Nick Dacko, George Liebzeit, Harry Lozan, Floyd Pearl.

The Master: That is all?

A. That is all.

Q. (By Mr. Lamb) Now, as I understand it, to clarify this picture of this Monday morning work, what you have testified to relative to their coming in early on that day to unload the saggers, that only applied to Monday and that the situation on that day, therefore, is different than on other days, isn't that correct?

A. That is right.

Mr. Nunneley: He testified it only applied to Mondays after a certain day, too.

Q. (By Mr. Lamb) Yes, and will you tell us what date that applied to?

A. October, 1940.

The Master: What was done before that?

A. Well, we weren't so insistent that the people would come in and they wouldn't have work immediately when they would come in, but this method of operating, when the rest of the department would come in, there would be work available at 10 o'clock for them to start working.

The Master: In other words, before October, 1940, you mean that everybody in the department would come in at 7 and then this job would have to be done before the others could do any work?

A. That is right.

Q. (By Mr. Lamb) How was that change brought about, was that the result of an order from the head office, Mr. Doll, or some general direction; just tell us how that occurred, will you?

A. That was a matter of the foremen's operation in the department.

The Master: Well, who made the decision to make that change?

A. The rest of the foremen on the belt cooperate their problems and decide to operate to the best advantage.

The Master: You mean that all the foremen in the department got together and decided that it would be a good thing?

A. That is right. • • •

June 24, 1942

HARRY A. REIFIN, was thereupon called as a witness on behalf of the Plaintiffs, and having been first duly sworn, testified as follows:

• • •

Direct Examination

By Mr. Lamb:

Q. Will you give us your business address, Mr. Reifin?

A. Wage and Hour Division, David Stott Building, Detroit.

Q. What is your capacity with the Wage and Hour Division?

A. Supervising inspector in Michigan.

Q. You have charge of the office of the Wage and Hour Division of the United States Department of Labor for the State of Michigan area, is that correct?

A. That is right.

Q. How long have you been with the Wage and Hour Division, Mr. Reifin?

A. Since August 3, 1939.

Q. The area under your supervision includes the City of Mount Clemens, Michigan?

A. Yes, it does.

Q. You are familiar with the Mt. Clemens Pottery Company, are you not?

A. Yes, sir. Well, I am not so sure how far that goes. I am familiar with the Mt. Clemens Pottery Company so far as the name is concerned, and the operations from the standpoint of our inspection. Other than that, I don't know very much about the company.

Q. Mr. Reifin, do you appear here in response to a subpoena?

A. Yes, sir.

Q. In your capacity with the Wage and Hour Division, have you visited the premises of the Mt. Clemens Pottery Company?

A. I did in 1939; in November of 1939.

Q. And you interviewed employees and members of management, did you?

A. Yes, I did. • • •

Q. (By Mr. Lamb) Did you make a request to the employer of the Mt. Clemens Pottery Company to have interviews with the employees?

A. I did.

Q. And did you hold such interviews?

A. I requested permission to hold interviews privately on the premises which was denied, and Mr. Doll, Senior, told me that I could, however, talk to anyone that I wished on the premises, provided I went with his son.

Q. Charles E. Doll, Junior?

A. That is right.

Q. And was that done?

A. That was done.

Q. And the interviews you held were in the presence of Mr. Charles E. Doll, Junior, is that correct?

A. That is right, except I don't want to give a wrong impression here. Mr. Doll, Junior, stayed aside about 10 or 15 feet away while the interview was being conducted. He wasn't exactly present, and didn't hear the questions or the answers that were asked.

Q. But the employee could see that Mr. Charles E. Doll, Junior, was present?

Mr. Nunneley: We object to that.

A. That is right.

The Master: I will overrule it. It is leading, but I don't think any harm is done.

Q. (By Mr. Lamb) Did you stay on the premises or visit the premises and interview employees on various days in that year 1939?

A. If I recall correctly, I believe the interviews that I made on the premises, those that I made on the premises were made in one day; I don't think I contacted any employees other than that one day.

Q. I see.

The Master: About how many did you interview, according to your recollection?

A. I would say about 10 to 15.

The Master: Were those scattered around in different parts of the plant?

A. Yes, sir.

The Master: Did you spend the whole day, according to your recollection, doing interviewing, or was it just a few minutes?

A. No, it was, I would say, a good two hours; it wasn't the whole day.

The Master: About how long would you spend with any one employee?

A. Not more than 10 minutes. I couldn't very well, because there were certain questions I didn't want to ask employees in the presence of the employer.

Mr. Nunneley: We move that be stricken out. He didn't ask any questions, it is obvious he already stated the employer couldn't hear; I move that that be stricken out.

The Master: He is stating his own reason, at least, why he didn't; I will leave it in as his own reason.

Q. (By Mr. Lamb) You visited the plant on other occasions, did you?

A. Yes, I was there four days.

Q. In 1939?

A. That is right. Pardon me, did you say "October"?

* * *

Q. (By Mr. Lamb) Did you make inquiry from the employees relative to their going directly to work after punching the time clock and proceeding to productive work immediately after punching the time clock?

Mr. Nunneley: We object to that. * * *

The Master: I can think of some cases in which your argument might have force, but I don't see how that has force here where there is a dispute over the company's method of keeping its records and paying its employees, or keeping time records of its employees and computing overtime, and all the company's records pertaining to that issue have been necessarily exposed by the lawsuit and are subject to—well, they have been scrutinized by the Master and by the opposite party as well as the defendants and have become public records so that any further disclosure along that line that the witness might make, would not be like the witness going out and telling some competitor or somebody who might be interested in injuring your organization, information that he had gained as a Governmental employee in inspecting the books and records, and making any other inspection when the defendant was under compulsion to submit to the inspection.

Well, I would like to find out as a preliminary matter, as to whether you have any authorization from your su-

periors or whether it is the position of the agency that you yourself can divulge information which you might be able to resist on a subpoena if you wished to do so.

A. I was waiting for an opportunity to make a statement, and I would like to say that ordinarily the Division does not permit members of the staff to testify because of some of the reasons mentioned here in connection with the privilege. However, in this particular case I have been authorized both by Washington and New York to testify to certain facts, so long as I keep in mind the privilege and raise the objection when I think that it might be something that they would not want me to testify to in connection with the general policy that has been outlined for such matters by the Division.

Now, in testifying here, I wanted to bring that out, so that in the event that I did in some instances object to answering, I would not be subject to censure or criticism for not doing so.

The Master: Of course, it is true if you testify to matters on direct examination, if you are permitted to do so and if the privilege has been properly waived, then you couldn't refuse to be cross examined upon the same subject matter that you have testified to on direct examination. You recognize that, I suppose? • • •

A. I just would like to add to my previous statement. I think some of this possibly could have been avoided because I don't think I would be privileged to answer the question as put with respect to what information I secured from the employees. • • •

The Master: Let me ask you this; you said there were certain things that you were willing to reveal; would that include the report, the written report that was made?

A. No, sir. • • •

Mr Lamb: There is a question now before the witness about what his examination revealed.

The Master: I think the question was as to whether or not he asked—will you read back the question?

(Question read.)

Mr. Nunneley: We objected to that because it is not material here, because of the fact that in that case the result of it would be hearsay; whether he did or didn't, it couldn't be material here unless the result of the inquiry could be brought into evidence.

The Master: I don't know, I wonder if it isn't material on this ground. If the investigation didn't cover that point, it would have some bearing on the weight to be attached to a failure to make a complaint on that point.

I think on this question as to whether or not he interrogated the employees on that point, I will—

Mr. Nunneley (Interposing) Well, with a yes or no answer.

The Master: I will overrule the objection on this particular question.

Mr. Nunneley: We submit, then, it should be restricted to the question or answer of yes or no.

The Master: I think he can answer it yes or no, whether or not you interrogated the employees—read back the question that was asked.

(Question read.)

The Master: Can you answer that yes or no?

A. Yes. In doing so, however—

Q. (By Mr. Lamb) As a result—

Mr Nunneley (Interposing) Just a minute.

Mr. Lamb: I beg your pardon. You wanted a yes or no answer, and you got it.

The Master: I will hear what he is going to add so long as it isn't a statement as to what the employees told you.

A. That is what I was going to say, that I didn't want to get into that. By answering the question I didn't want to have it taken as though I was waiving the privilege of evidence because I don't want to go into the answers that the employees gave me. I think that is privilege.

Mr. Lamb: That is his explanation. Now, may I ask this question?

The Master: Go ahead.

Q. (By Mr. Lamb) As a result of your inspection did

you find that the employees start to productive work immediately after punching the time clock?

Mr. Nunneley: Now, if the Court please, we are going to object to that. We think that this whole matter is simply done in here now for the purpose of making us object to things that we know are incompetent and he knows, of course, that that couldn't be anything but a conclusion, couldn't be anything but hearsay in addition to the privilege, if there was any privilege. • • •

The Master: I want to find out first whether it is a question that he is willing to answer.

A. May I have the question read?

The Master: Read it back?

(Question read.)

A. I would answer so long as it didn't open up all the avenues that I heard you mention just a moment ago. • • •

The Master: Well, of course, the witness in stating as to whether or not he was willing to answer the question, did make his answer conditional. He said he would be willing to answer the question only if it didn't compel him to go into the other matters on cross-examination, so I guess I am faced now with the necessity of ruling on the whole question.

Mr. Nunneley: That is right.

The Master: Because of the condition attached.

A. The only purpose in the condition was that I understood you to say that if I answered the question, it would make available to the defendants here the Department record and the written report at the time of the investigation, and that they also would be privileged to go into the question of certain individuals who gave this information to me as a representative of the Government.

The Master: You are unwilling to reveal either of those matters?

A. That is right. I think that definitely would be privileged evidence, if anything is.

The Master: I don't see how he can testify to his find

ings and conclusions from the investigation, wholly apart from any question of the hearsay rule, and then have the other side restricted so that it can't test the accuracy or credibility of the statements by going into the questions of reports that he made at the time, consideration of the facts upon which he based his findings and conclusions.

With this expert witness who was on the stand the other day, I took that position that he couldn't testify as to a general statement about revealing the facts, the names of the plants and detailed facts upon which he based his general conclusion. It seems to me that the witness' willingness to answer the question here is based upon a condition which can't be enforced by the Court, and that [illegible] fore he is invoking the privilege.

I think I will have to sustain the objection for that reason.

Mr. Lamb: The plaintiffs therefore proffer the answer which this witness would give if permitted to do so. The answer, if this witness were permitted to answer the following question, "As the result of your inspections did you find that the employees did start to productive work immediately after punching the time clock," the answer would be as follows: "I, as the supervising inspector of the Wage and Hour Division of the U. S. Department of Labor did, as the result of my inspection of the operations of the Mt. Clemens Pottery Company, find that the employees of the Mt. Clemens Pottery Company did start to productive labor and work immediately after punching the time clock." • • •

Q. (By Mr. Lamb) As the result of your inspection of the operations of the Mt. Clemens Pottery Company, did you find that the production belt started moving before what has been called the regular starting time?

Mr. Nunneley: Same objection. • • •

The Master: Did you observe, when you were around the plant, what time the production line started in the morning, directly?

A. In the morning?

The Master: Yes.

A. No, sir, not that I can recall.

The Master: Did you directly observe the time that the—or the actions of the employees when they reported for work in the morning, and their actions in moving from the time clock to their particular departments and starting their work in the department?

A. Not in the morning.

The Master: Did you do it in the afternoon?

A. Yes, sir.

The Master: Did you also do it—did you make any observations in the afternoon when the employees were reporting back to work after lunch?

A. They were reporting on a new shift.

The Master: On a new shift in the afternoon. I see. Did you make any observations when the employees were leaving the shift or leaving for lunch?

A. No, sir, not personally. * * *

Mr. Lamb: Now, about the question that is on the record:

> "As a result of your inspection, did you find that the production belt started moving before what has been called the regular starting time?"

The Master: I will sustain that objection insofar as it asks for the results of his investigation, apart from his personal observation.

Mr. Lamb: And then I will make the proffer on that question, that if the witness were permitted to answer the following question:

> "As a result of your inspection, did you find that the production belt started moving before what has been called the regular starting time?"

The answer which would be given by the witness would be as follows:

> "I, as supervising inspector of the Wage and Hour Division of the United States Department of Labor, as a result of my inspection of the operations of the Mt. Clemens Pottery Company, found

that the production belt started moving before what has been called the regular starting time."

Q. (By Mr. Lamb) Mr. Reifin, the Master asked this morning whether or not you had advised the Mt. Clemens Pottery Company relative to the correctness of their method of computing time worked, and I will ask you whether in fact you did write what has been marked as Exhibit No. 91?

(Copy of letter dated September 8, 1941, was marked Plaintiff's Exhibit 91.)

Mr. Lamb: (Handing paper to the witness.)

Q. (By Mr. Lamb) —representing a letter dated September 8, 1941, addressed to the Mt. Clemens Pottery Company, Mt. Clemens, Michigan, attention Charles E. Doll, Senior, vice president and general manager. Did you send that letter to the Mt. Clemens Pottery Company?

A. This is a copy of the letter which was sent to Mr. Doll.

Q. This is a correct copy of the original letter which was sent to Mr. Doll?

A. Yes, sir.

Q. And you have signed this copy, as I understand it?

A. That is right.

Mr. Lamb: We offer this. • • •

Mr. Nunneley: We want, first, to call your Honor's attention to the fact that the date of this letter is September 8, 1941, or several months after this suit was started, in the neighborhood of two years after the investigation was made. • • •

The Master: I think I will admit the exhibit and let the objections go to the weight to be attached to the evidence.

Mr. Nunneley: I move it be stricken.

The Master: Overruled.

Q. (By Mr. Lamb) I think you have said that you did send this letter, Plaintiff's Exhibit 91, to the Mt. Clemens Pottery Company, on or about September 8, 1941, is that correct?

A. Yes.

Q. Now, at the time that you made your inspection in 1939, Mr. Reifin, did you have any conversations with Mr. Doll, Senior?

A. Yes, sir.

Q. Can you advise us whether you discussed with him the matter of paying employees for the time that they were on the employer's premises?

A. I advised Mr. Doll—

Mr. Nunneley: Just a minute.

The Master: First, just answer whether you discussed that question with him.

A. Yes, I did.

Q. (By Mr. Lamb) Now, will you advise us the conversation?

Mr. Nunneley: What was the date of this?

Q. Will you give the month or year, that that occurred?

A. It was in November, 1939, either the 20th, 21st, 22nd, or—from the 20th through the 26th, one of those four days, I am not sure just which.

The Master: And, where did this conversation take place?

A. In Mr. Doll's office.

Q. (By Mr. Lamb) At Mt. Clemens, Michigan?

A. At Mt. Clemens, Michigan.

Q. All right. And what did you say? What was the conversation?

A. I informed him that time spent on the premises by any employees who were required to be there by the company was to be considered as hours worked, regardless of whether they worked or not. I explained to him the provisions of Section 3-G of the Act, which explained hours worked, or, I should say, defined hours worked, and also gave him a copy of our interpretative bulletin No. 13, which is the Wage and Hour Division's interpretation of that section.

Q. Did you, as a result—

Mr. Nunneley: We understand all this witness' testimony is taken over the objection on the ground--

The Master: I did not know you were objecting to this particular point.

Mr. Nunneley: I want it to be understood.

The Master: I don't see any ground on which you can object to this testimony in view of the testimony that you put in yourself. I will overrule that. I am quite positive in my opinion on that.

Q. (By Mr. Lamb) Did you, as the inspector of the Wage and Hour Division, at the time of the discussion referred to with Mr. Doll, advise Mr. Doll that by virtue of Section 3-G of the Fair Labor Standards Act to the effect that if employees were instructed to ring their time cards prior to the starting time, that any time thereafter would be considered as working time, and must be so computed?

A. Yes. They were to be considered as working beyond any time which they were required to punch in, or be on the premises. . . .

Q. (By Mr. Lamb) I would like to have you advise the Master whether or not you observed the time clocks, the location thereof, and the physical set-up at the plant?

Mr. Nunneley: Same objection.

The Master: I will find out whether he made observations on it.

Q. Did you see the time clocks?

A. Yes. I don't know whether I saw all of them or not. I think I did.

Q. Could you advise us, Mr. Reifin, whether or not it is a fact that there are benches located at the time clock to permit the employees to wait until the time when they punched the time clock?

A. Yes. Either benches or chairs. There is a place to sit, anyway.

Q. And those are provided for the employees to sit until the time they punch their time clock in?

A. That is right.

Mr. Nunneley: I suppose we should make the early risers stand up.

Q. (By Mr. Lamb) Now, did you have any other occasion to talk to Mr. Charles E. Doll, Senior, relative to the matter of the computation of hours worked, and so forth?

A. Well, I spoke to him several times during my inspection, but indicated that I would wait until I was through before advising him with respect to my findings, and then I spoke to him again on the telephone, long distance, and also in a conference in Detroit in October of last year.

Q. That is, you had a conference with Mr. Doll in October of 1941 in your office?

A. In the Wage and Hour Division, in my office.

The Master: When did this telephone conversation take place.

A. I talked to him two or three times, I think, long distance. The one that I am referring to was just prior to the conference in October and following the writing of this communication (indicating). I asked Mr. Doll to come into the office because I wanted to discuss these matters with him.

Q. (By Mr. Lamb) At the time of the conference that you had in your offices in Detroit with Mr. Doll, did you advise him relative to the requirements of paying employees while on the employer's premises?

Mr. Nunneley: Now, if the Court please, we object to that. Here again is something that happened long after, even after the suit was started. • • •

The Master: Well, there may be something in that. I will take the evidence, however, and let that go to the weight of the evidence, or if you can establish afterwards that it shouldn't be considered at all, I will give that consideration. • • •

A. Well, Mr. Doll was again advised with respect to the proper interpretation—or the Division's interpretation of what constituted hours worked, because we had

been informed that the violations had continued and we wanted to be sure that we had on record in writing, as well as in conference with him personally, the provisions of the act which we felt might be continuing in violation.

He was again advised concerning the interpretation of Section 3-G of the act. And also discussed at that conference was the payment of back wages to office workers whom Mr. Doll insisted had not worked overtime.

Mr. Nunneley: I move it be stricken.

The Master: When you say "he was advised," do you mean you advised him of that?

A. That is right.

The Master: Who were parties to this conference?

A. Mr. Doll, Senior, Mr. Doll, Junior, Carl Kahler, our senior inspector who works under my supervision, and Mr. Cross, Earl R. Cross, attorney for the Division, and myself.

Q. (By Mr. Lamb) And this conference took place in the Division's office in Detroit.

A. In my office in the Federal Building.

Mr. Nunneley: I move it be stricken. It all happened long after the suit was started.

The Master: I will let the evidence stand, and let that go to the weight of the testimony.

Mr. Nunneley: It consists only, apparently, of legal advice given to the party after the suit was started.

The Master: Well, your objection is on the record, and I will take it into consideration in weighing the evidence that is being given. I don't think it is of as much value as statements made prior to the time the suit was started and at the time the investigation was made.

Q. (By Mr. Lamb) You spoke of advising Mr. Doll about office workers working overtime. Will you advise us whether you observed office workers working overtime at the Mt. Clemens Pottery Company?

A. I did.

Mr. Nunneley: We object to that. There is no office workers involved in this suit. • • •

The Master: I don't want to expand the scope of this hearing at this late date, and I don't think that question is an issue here. It is the first I have heard anything of office workers. • • •

Mr. Lamb: May I then make a question of proffer on the office workers?

The Master: Yes.

Mr. Lamb: The question is, "Did you observe office employees of the Mt. Clemens Pottery Company who were subject to the provisions of the Fair Labor Standards Act of 1938 working overtime for which they were not reimbursed at the rate of time and a half?"

And the answer, if the witness were permitted to give the answer, is as follows:

> "Yes. From personal observation I saw employees of the Mt. Clemens Pottery Company in the office of the Mt. Clemens Pottery Company working overtime, for which they were not paid at the rate of time and a half. Also—"

Mr. Nunneley: Now, just a minute. On the matter of proffer, I take—

The Master: Let him complete his statement. • • •

Mr. Lamb: (Continuing) "Also, that the records of the office workers were incorrectly kept, and inaccurately kept; that when I talked to Mr. Doll about the records of the office workers in 1939, he denied that there were any such time records kept. Some time later, however, when I again conferred with Mr. Doll, he stated that they did have records of the time worked, but that it had been impossible to locate the same at the time of my first inquiry for, and request for, such records."

Mr. Nunneley: Now, if the Court please—

Mr. Lamb: Just wait until I finish, please.

> "From personal observation, I saw that these employees were working overtime, and that the records thereof were not being accurately kept by the office workers or the management of the Mt. Clemens Pottery Company."

Mr. Nunneley: Now, I move that the entire statement of Mr. Lamb, relative to his proffer, be stricken from the record, for the reason that it is simply an attempt to prejudice the record, that in the matter of making a proffer of proof, one has a right to make an offer to prove certain facts. In other words, one has a right, if he wants to, to make an offer to prove that the records were or were not kept, something of that sort. He has no right to state on the record what purports to be the testimony in detail of any individual witness, and for that reason we move it be stricken.

He has no right, nor can gain no benefit as testimony by any such statement as that. He does have a right, as I said before, to offer to prove facts, but to say that this one will testify to this or that one will testify to that, that is not a proper proffer.

Mr. Lamb: First, they object to allowing the witness to answer.

The Master: Just a minute. I am going to leave the statement and the objection on the record. It doesn't concern me, because I will hold that that evidence is irrelevant to the case, and I will disregard both the statement and the objection. It may only concern some higher court passing upon the record, and the court at that time can pass upon whether or not the proffer of proof meets the requirements of a good proffer of proof. I don't think I will stop to look up the law on that. • • •

Q. Mr. Reifin, from your personal observation, how long did it take employees in the Mt. Clemens Pottery Company to go from the time clock to their work bench?

Mr. Nunneley: Object to it for the same reason.

The Master: Let me ask you this, Mr. Reifin. The report that you made to your superiors, was that based upon both your investigation of the records and your talks with the employees, and your personal observation of the manner in which the employees reported for work?

A. Yes.

The Master: It covered the latter matter as well, personal observation?

A. Yes.

The Master: I have been thinking this question over that I took under advisement, and this brings up the same problem, that if the privilege is extended to the report which covered that matter, that the witness can't be permitted to testify on direct examination to his personal observation, because it would then be proper for the defendants to ask on cross examination as to the written report that he made at the time. Since he cannot reveal that, and since he will only answer the question if it doesn't become necessary to reveal that, I think the waiver of the privilege is conditional and I will sustain the objection.

You may make your offer of proof. • • •

Mr. Lamb: The witness, if permitted to answer, would say that from his personal observation of the employees of the Mt. Clemens Pottery Company, that said employees took between one minute and three minutes to go from the time clock to their work bench.

Q. (By Mr. Lamb) Mr. Reifin, you were discussing your conference with Mr. Doll when you testified this morning. Can you advise us whether or not you told Mr. Doll that the Mt. Clemens Pottery Company was subjecting itself to civil liability by employees because of the method of computation at the time of the employees as used by the company? • • •

Mr. Nunneley: Now, we object to that, if the Court please, for the reason that that would again involve going into the report and the records. I assume that if there was a liability at the time, that this man, as a dutiful inspector—we assume it would be in the report.

The Master: You can't produce Mr. Doll and have him testify to one side of the conversation and object to some other party to the conversation testifying to his version of the conversation.

I will overrule the objection.

A. I informed Mr. Doll at that time that for the purposes of administrative settlement of the case, we would not require restitution for periods of employment of in

dividuals that had not been paid for which were less than 15 minutes, but I did say that—I advised him, rather, of his probable liability under Section 16-B of the Act, and also advised and cautioned him against a continuation of any practice where employees were permitted to work any amount of time for which they were not paid and which was not recorded as hours worked.

Q. (By Mr. Lamb) When you referred to Section 16-B of the Act, will you advise the Court whether you referred to that part of the section permitting employees to bring an action for overtime pay.

A. That is right. That is Section 16-B. • • •

Q. (By Mr. Lamb) Do you know a man by the name of Joseph D. Fox?

A. Yes.

Q. Can you tell us who he is?

Mr. Nunneley: Now, just a minute. Who he is? I object to that as being an improper question entirely.

• • •

The Master: Who he is means what did he do, I presume.

A. The last I heard he was a representative of the Industrial Advisers in Cleveland, and he goes around the country making contact with employers with respect to advising them concerning the Fair Labor Standards Act. He is a former inspector of the Wage and Hour Division.

Q. Can you advise us whether he was dismissed from the service of the Wage and Hour Division?

Mr. Nunneley: We object to that, if the Court please.

Objection Sustained. • • •

Mr. Lamb: I would like to make a proffer of what the answer would be.

The Master: Yes.

Mr. Lamb: If the witness had been permitted to answer the question, he would state that Joseph D. Fox was discharged and dismissed from the Government service, the Wage and Hour division of the United States Department of Labor.

Mr. Nunneley: We move that the proffer be stricken out, for the reason that it is a matter—

The Master (Interposing) I will let the statement stand as the offer of proof.

Q. (By Mr. Lamb) Mr. Reifin, in your opinion is Mr. Joseph D. Fox, this former inspector of the Wage and Hour Division, an expert on the subject of the Fair Labor Standards Act of 1938?

Mr. Nunneley: We object to that, as to whether in his opinion Mr. Fox is an expert. That is a matter entirely for the Court.

The Master: I think that is a matter for the Court. You can ask him if there are any facts he knows as to what Mr. Fox does and as to his familiarity with business practices, but the determination of whether a man is an expert I think is a question for the Court.

Mr. Lamb: I would like to proffer the answer, if the objection is sustained; is it?

The Master: Yes, it is; as to the question of his opinion.

Mr. Lamb: The answer, if the witness were permitted to give it, is that Joseph D. Fox is not an expert on the subject of the Fair Labor Standards Act of 1938.

Mr. Nunneley: We move that the offer be stricken as not an offer of proof.

The Master: You may proceed. I will let the offer stand.

Mr. Lamb: I would have no further questions on direct, except that your Honor reserved the judgment about—

The Master (Interposing) Yes, I reserved that, and I have since ruled on it. It seems to me that that evidence must be excluded because of the non-access of the report.

Mr. Lamb: Do you recall what the question was, your Honor?

The Master: Yes, I do. The question was as to whether or not—

Mr. Lamb (Interposing) "As the result of your in-

spections, did you find that the production belt started moving before what has been called the regular"—

The Master (Interposing) The question was as to his personal observation of the time the production started on the afternoon shift. That isn't the precise wording of the question, but I think that covers the whole question.

Mr. Lamb: And your ruling is that the objection thereto is sustained?

The Master: Yes, on the ground that that is one of the matters covered by the report, since he said he based the report and covered in the report his personal observation as well as the conclusions he arrived at from conversations with the employees, and that since the report is not available, the testimony of the witness apart from the report cannot be given. So you can make an offer of proof on that.

Mr. Lamb: All right. My offer of proof is that if the witness were permitted to answer the question, he would say that from personal observation of the employment conditions and practices and operations of the Mt. Clemens Pottery Company, the employees on the afternoon shift so-called, punch their time clock several minutes before the quarter-hour on which the afternoon shift, so-called, starts; that they proceed immediately from the time clock and begin work within a space of one to three minutes after punching the time clock and begin productive work several minutes prior to the quarter-hour on which the so-called afternoon shift allegedly starts.

In other words, from personal observation this witness would testify, if permitted so to do, that the procedure which he observed in operation and practice at the Mt. Clemens Pottery Company is that the employees appear at the plant, go to the cloak-room, prepare themselves for labor by taking off coats and hats, and so forth, and that they may and do wait on the benches until 14 minutes of or as near thereto as they can punch the time clock, punch the time clock, proceed immediately within a space of a minute or two or three to their productive labors, and

that the said employees of the Mt. Clemens Pottery Company are actively engaged in productive work several minutes before the hour which has been labeled in these proceedings as the starting hour.

The Master: I would like to ask this of the witness: in your conversations with Mr. Doll that you related in November, 1939, did you make any reference to observations that you made in the plant as to the starting on the production line?

A. Yes.

The Master: What did you say?

Mr. Nunneley: Now, just a minute. We object to that conversation. We didn't testify to anything like that.

The Master: Well, I am holding that he can go into the question—

Mr. Nunneley (Interposing) What he said to Mr. Doll he has already stated.

The Master: What he said to Mr. Doll.

A. I did not state everything I said to Mr. Doll, I merely said here before in response to what I thought was the question of the computation of wages and the hours worked. There were other matters that I told Mr. Doll at that time that I didn't mention here.

The Master: Of course, that question does relate to the computation of time and hours worked, does it not?

A. Yes. This particular point, yes.

The Master: Do I understand you haven't given fully the statements you made to Mr. Doll in that connection?

A. I didn't mention everything I told to Mr. Doll. There were other matters, too, I discussed with him. The matter of record-keeping requirements and—

The Master (Interposing) Have you mentioned everything that related to the computation of time?

A. No.

The Master: Will you state everything that you said to Mr. Doll at the time relating to computation of time?

A. As near as I can recall I also—

Mr. Nunneley (Interposing) Understand we have the objection.

The Master: Yes, I understand you have the objection.

Mr. Nunneley: It would lead us back into the same report. In other words, if he says he said to Mr. Doll so and so, then we can go into the report and see if he reported that to his superiors.

The Master: Well, I am only accepting this testimony as rebuttal testimony, because the plaintiffs—

Mr. Nunneley (Interposing) It is all right. Then we have the right to cross-examine and go into that report, because if—I don't know what this witness is going to say. The Wage and Hour refused to give us any access to anything. But, suppose he says why, I told Mr. Doll that this was all wrong, and all about it. Suppose he said that, the whole procedure is wrong. I don't say he said that, but suppose he did? Doesn't that immediately put us on cross-examination in the position of saying, "Where is that report? What about that?"

It leads right up to the same proposition. We maintain there isn't anything this witness can testify to.

The Master: Of course, that would put the plaintiffs in the position of you producing one party to a conversation and having him testify, and their not being able to get the other party to testify at all to the conversation.

Mr. Nunneley: It isn't our part.

The Master: Well, I think I will take this testimony and get it on the record, and you can have your objection and I will take the matter under advisement until the conclusion of the case, in effect making a special record of the testimony. I can see arguments both ways, but here is a case which involves a conversation that Mr. Doll has testified to with this witness, and I am permitting him to testify, and have ruled before the noon hour when the question came up, that he was permitted to testify as to his version of the conversations with Mr. Doll. I haven't let him go beyond that to testify to facts that he observed that he didn't report to Mr. Doll. This is limited to your conversation with Mr. Doll and what you said at that time, according to your best recollection.

Mr. Lamb: This is the first conversation and not the one—

The Master: Conversations in November, 1939.

A. Of course, the part that I mentioned before in connection, with the necessity of recording all the time worked by employees, includes the time which they spend on the premises at the instigation of the employer. If they are required to ring in at a certain time, any time beyond that point would be considered hours worked, and Mr. Doll was so informed.

I also asked him to include in the computation of hours worked, the time that the employer had docked employees for 15 minutes to a half hour in some instances as disciplinary because of coming late, or for other reasons.

I informed Mr. Doll that the Division wouldn't take any action at that time, advising him that an equitable arrangement wouldn't be objected to such as if the employee came in three minutes late and he was docked 15 minutes, the employer would also pay him for 15 minutes when his card showed that he worked three or four minutes over time; that I would consider that as an equitable arrangement, which had not been in practice in the company from my inspection of its records and discussion with employees, and the conclusions which were reached during the investigation.

I also informed him of the proper record-keeping requirements, how to bring his firm into compliance with those requirements, discuss with him the matter of a proper interpretation of exemptions, such as executives and administrative employees.

The Master: Well, this is limited, the question is limited to what you told him with reference to the computation of hours worked, and in keeping of the records in that connection. We are not concerned here with the question of exemptions of administrative employees.

Mr. Lamb: So that the record may be straight, your Honor, at this point may I make the request of the witness to relate the conversation with Mr. Doll and his associates relative to that same subject matter of computation of time worked of employees at the conference which

occurred in the Detroit office of Mr. Reifin at the Wage and Hour Division. * * *.

(By Mr. Lamb) Now, may I ask at this time that the witness discuss or state the conversation which took place at the Detroit office of the Wage-Hour Division between Mr. Doll and his associates and the various officials of the Wage-Hour Division, which took place—was it October, 1941?

A. October, 1943.

Q. With particular reference to the advice of your division relative to the employer subjecting himself to liability by an employee's action to recover for this time worked?

The Master: I think he has already gone into it, hasn't he? Do you have anything to add to what you have already stated at that conference?

Mr. Nunneley: We object because it was long after the suit was started and it doesn't make any difference.

The Master: I understand there is an objection and I don't see anywheres near as much importance can be attached to that conversation at that time, even if it is admissible, because it was after the suit started. I attach much more importance to the conversation in September, 1939, but if he has anything to add to that, I will take it.

A. The matter was again discussed with Mr. Doll, because of the fact that we had again received complaints.

Mr. Nunneley: We object to that; whether they received complaints after this suit was started, is absolutely immaterial; it doesn't make any difference in this matter. Obviously a suit had been started. We don't know anything about the complaint, or anything connected with it, whether they were these people, or who went and made them. It can't make any difference in this case, things that happened after the suit was started, or what they told him. If there was a liability it had already been incurred and what his advice was.

The Master: I don't know, there is a defense here that the Wage and Hour Division in effect white-washed the employer.

Mr. Nunneley: At that time.

The Master: And that they are not making a complaint or bringing any suit against you. That has been pointed out or raised several times by the defendants.

Mr. Nunneley: That is right.

The Master: It may have some bearing on that. I will take his testimony on it.

A. I again advised him of his continued possible liability under Section 16-B of the Act, in the event that it was determined that the practices which we had—which were reported to us were true; in addition, of course, to the fact that if we found on investigation that these conditions were true, that it would be considered a willful and flagrant violation and would be so reported.

The Master: Any further questions?

Mr. Nunneley: I move it all be stricken out.

The Master: I think I will let the evidence stand. I think I will let that go to the weight. • • •

Cross Examination

By Mr. Nunneley:

Q. You said this morning that you had a subpoena to come here?

A. Yes.

Q. Will you produce it, please?

(Document produced.)

Q. When did you receive this?

A. This morning.

Q. This morning?

A. That is right.

Q. What did you say your title was?

A. Supervising inspector, Wage and Hour Division, United States Department of Labor.

Q. How long have you had that position?

A. Since June of last year.

Mr. Nunneley: That is all. • • •

PIERCE E. WRIGHT, was thereupon called as a witness on behalf of the Defendants, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Cooper:

Q. Where do you live, Mr. Wright?
A. 19178 San Juan Avenue, Detroit.
Q. What is your business or profession?
A. I am a labor relations counsel.
Q. How long have you been engaged in that line of work?
A. 20 years.
Q. Do you act individually or as a member of some organization?
A. Individually.
Q. In connection with your work have you had any occasion to make a study of the methods generally employed by factories as to computing hours worked?
A. Yes. On many occasions.
Q. Approximately how many factories have you studied?
A. Oh, I would hazard somewhere in the neighborhood of 100.
Q. And, in what general area are they located?
A. Within the State of Michigan.
Q. Did you find any similarity as to the methods employed by the different factories as to computing hours worked?
A. Yes, I have.
Q. Is there any standard practice as to method of computing hours worked in this territory?

Mr. Lamb: Objection.

A. Well, there is—

Mr. Lamb: Just a minute.

The Master: Just a minute. This is the same question I have ruled on many times before. I will take the testimony on that question of custom and practice.

A. There is a standard practice to this effect; usually a time card is punched some minutes before actual whistle or starting time. The time computed is from the whistle or starting time. The time clock or the card, likewise, is punched some minutes after the quitting time, and the hours on the premises or the work within the starting time and the quitting time are computed as hours worked for the day.

Mr. Lamb: I ask that the answer be stricken.

The Master: Denied.

Q. (By Mr. Cooper) In connection with your studies, have you had occasion to observe the time clock cards themselves?

A. Yes, I have.

Q. Could you give the Court any rough idea as to how many time clock cards you may have seen?

A. Oh, I would have to hazard a guess on that; it would run into many thousands.

Q. Now, on the basis of your own observation, can you say about how long before starting time on the average workers punch in the time clock?

Mr. Lamb: Objection.

A. Actual studies—

The Master: Just a minute.

Mr. Lamb: Are they referring to Mt. Clemens Pottery Workers?

The Master: No, I understand the reference is as to these plants he has observed generally.

Mr. Cooper: Yes, your Honor.

The Master: Again, I will take the testimony.

A. Actual studies that I have made reveal that most cards are punched anywhere from 14 to 6 minutes before

actual starting time, with the greatest bulk from 14 to 9 minutes before actual starting time. Now, that would prevail in plants where the rule prevails that employees shall not enter the plant more than 15 minutes before actual starting time. Where the rule prevails that they may enter the plant up to 30 minutes before actual starting time, you find that they will straggle all through the 15 minutes.

Mr. Lamb: I ask that the answer be stricken.

The Master: Same ruling.

Q. (By Mr. Cooper) Have you had any occasion to observe a situation as to whether or not there is wide variation between a large plant and a small plant, as to the amount of time before starting time that employees punch in?

Mr. Lamb: Objection.

The Master: The question is quite leading.

Mr. Cooper: I thought I simply asked as to whether he had occasion to observe as to any situation.

The Master: You asked about the variation, if there is any variation; have you observed any?

A. There isn't any variation except so many employees can go through a time clock, so there can't be much variation, that is between the large plants and the small plants. There is a limit on the number of men that can punch a time clock, number of employees.

Q. (By Mr. Cooper) What is that limit?

A. Well, with the hand tripper, as we know it, it will take about anywhere from 23 to 27 employees a minute, and with the new modern electric tripper, that will take as many as from 35 to 42 or 43 a minute. • • •

Q. Did you say that you observed in certain factories that you studied, that a 15-minute period or so is set up before starting time?

Mr. Lamb: Objection.

Q. (Continuing) In which employees are permitted to punch in?

Mr. Lamb: Objection to the form of the question.

The Master: Overruled.

A. To my knowledge about 95 per cent of the plants that I have studied, don't permit employees to enter more than 15 minutes before starting time, and further insist that they must leave within 15 minutes after quitting time. The only exception to that is where it is necessary for a man to change his clothes entirely, due to the type of work he may be doing. A man in a foundry may want to change his clothes from his skin up, and he requires a little bit more time. Where they are working in water, or they are working in damp places, they may change their clothes to a heavier type than street clothes and may want to wear boots, and all of that entails more time than usually allowed in the 15 minutes entering before starting time. Consequently those plants permit those men to come in a half hour before the starting time.

Q. Have you made any—

Mr. Lamb: I ask that the answer be stricken.

The Master: Unless I make a change on my ruling on a motion to strike, the record will show I deny all these motions to strike where I have overruled the objection. If I have sustained the objection, of course the question isn't answered.

Q. (By Mr. Cooper) Have you had any occasion to study the reasons for the adoption of such a 15-minute rule?

Mr. Lamb: Objection.

The Master: Overruled.

A. Yes.

Q. And what did you find?

A. Well, the management usually concludes to put 15-minute rule into effect for two reasons: one would be a morning reason and the other would be an afternoon reason, if there was an afternoon shift working. First, it requires opening up the plant, and lighting and heating. Some of the office force, perhaps, or some of the plant clerical force must be on the job while these men are coming in, and they don't like to have the men enter the plant

before those people are on duty. It is done in a great many instances for protective measures.

And regarding the afternoon shift, we find that if they come in more than 15 minutes before starting time, they interfere to a large extent with the day shift. They usually go over to the day shift machine, or the day shift place of work, and there is usually a lot of chatting and a lot of talking, and a lot of discussion which interferes with the normal production, and consequently by limiting it to 15 minutes, they don't have much interference with the change of shift.

Q. Do you have occasion, Mr. Wright—

Mr. Lamb: I understand I should not repeat the request?

The Master: I don't think it is necessary, and I think that just to save time, the defendants can stipulate that if an objection is made, it is unnecessary to make a motion to strike immediately after the answer, because your objection preserves your objection on the record.

Mr. Nunneley: In all cases where there is an objection, we are willing to have it understood that it is being followed by a motion to strike on both sides.

The Master: All right. You may proceed.

Mr. Nunneley: May the record show Mr. Lamb agrees to that?

Mr. Lamb: Oh, yes, certainly.

The Master: I did not mean to prevent you from making a motion to strike, but I was saying my ruling would be the same. Sometimes I have not directly passed on the motion to strike, but now the stipulation is made that each objection is automatically followed by a motion to strike.

Q. (By Mr. Cooper) Mr. Wright, do you have occasion to engage in collective bargaining negotiations?

A. Yes, I have negotiated perhaps—I have negotiated 22 agreements so far this year.

Q. In what capacity did you act?

A. As a negotiator between the employee and the employer.

Q. Is provision usually made either in a collective agreement or in the shop rules issued thereunder, as to a starting time?

Mr. Lamb: Objection. This question is entirely leading. • • •

The Master: I think that is clearly leading. You should ask if any provision is made, or to what extent such provisions are made, if any, instead of in the form is provision usually made, which naturally would lead the witness to say yes, it is. Will you re-state your question?

Q. (By Mr. Cooper) What provision, if any, is made in that connection, as to starting time?

Mr. Lamb: I have an objection to the question.

The Master: I will take the answer.

A. Provisions for starting time are usually in plant working rules. They are not a part of any labor agreement. I don't know of any labor agreement, and I have studied hundreds of them that contain any provision for actual starting time. It is usually a function of management to designate starting time, and management do that to suit management's convenience. • • •

The Master: By that do you mean the official starting time of any shift as to whether a shift is run from 7 to 3 or 8 to 4?

A. Yes. Agreements usually provide that a work day shall consist of 8 hours.

The Master: But, they don't designate what hours of the day?

A. I don't know of any that ever have, except the building trades used to years ago put a starting time in at 7 o'clock, and they have even done away with that lately.

Q. (By Mr. Cooper) What provision, if any, is found in shop rules as to starting time?

Mr. Lamb: Objection.

A. Provisions in shop rules for starting time—

The Master (Interposing) Overruled. Wait in each

case until counsel makes an objection or fails to make one.

Mr. Lamb: There was an objection.

The Master: I will take the answer. I would like to have you tell me what shop rules are, though, in connection with the answer.

A. Shop rules are safety rules and rules of conduct, and shop procedure, usually published by management. The safety rules will contain almost everything that the management can think of that should be included to prevent accidents in the plant. The rules—the shop procedure and shop rules have to do with punching of the time clock, and with horseplay in the plant, the use of tools, the starting time, the lunch time, the quitting time, and setup provisions that must be followed by the employee if he is off a day to report to the employment department and give a reason as to why he is off, and, well, I just about covered everything. It is usually covered in about anywhere from 40 to 60 rules.

The Master: How are these rules disseminated among the employees?

A. They are usually printed, distributed, or published on the bulletin boards, depending on the number of employees of a plant. You couldn't expect a plant of 60 employees to go to the extent of publishing a little bit of a booklet. They can have the same effect by publishing them, typewriting them and putting them on bulletin boards in the plant.

The Master: Now you may answer the question Mr. Cooper asked. Will you read it back, Mr. Reporter?

(Mr. Cooper's question read by the reporter.)

A. Simple little rules simply stating whistle time will be 7 A. M., or starting time shall be 7 A. M. That is the only two phrases I have ever used, or I have ever seen.

Q. (By Mr. Cooper) What provision, if any, is found as to the use of time clocks?

The Master: In shop rules or on union agreements, or both?

Mr. Cooper: Either or both.

Mr. Lamb: Let the record show an objection.

A. I know of none in shops or labor agreements—

The Master (Interposing) Objection is noted and overruled. You may answer.

A. I know of none in labor agreements. The usual verbiage covered regarding time clocks is substantially that each employee must punch his own time clock; punching the clock of another means immediate dismissal; he shall be sure that his card is placed in the proper rack after he has punched it, and he shall not make any erasures or any marks on the card. If there is anything on the card that does not meet with his immediate approval, he should immediately take it up with the time keeping department. That, in short, is what is covered regarding time clocks.

The Master: In the shop rules?

A. Yes, sir.

Q. (By Mr. Cooper) Mr. Wright, have you ever seen before what is marked Exhibit 71?

A. Well, this is a general instruction—

Mr. Lamb: Just a second, wait a second. Let him just answer the question.

A. Yes.

Q. (By Mr. Cooper) And where did you see it?

Mr. Lamb: Objection.

A. In the office of the Briggs Manufacturing Company in the City of Detroit.

Mr. Lamb: That is no way to prove it.

The Master: I will wait until he offers it. He can ask questions leading up to its offer. As to whether it is to be admitted, I will wait until he offers it.

Q. (By Mr. Cooper) Have you ever had any conversations about it out there?

Mr. Lamb: Objection. It is immaterial whether he had conversations about it out there. Maybe this isn't the same one.

The Master: I will see what his answer is.

A. Yes, I have discussed it with Mr. Landis, the assistant personnel director.

Mr. Lamb: Let the record show a request that that answer be stricken.

The Master: Are you trying to prove the existence of the agreement by that method?

Mr. Cooper: Not yet, your Honor.

Mr. Lamb: What difference does it make if he and Mr. Landis talked about some

Mr. Nunneley (Interposing) Do you want the case to take all summer?

Mr. Lamb: I am not interested in violating ordinary rules of evidence.

Mr. Nunneley: O.K. Apparently you are.

Mr. Lamb: And the conversations he had with Mr. Landis out at the Hudson Motor Company or some place else—

The Master (Interposing) He hasn't told what the conversation is.

Mr. Lamb: I say it is immaterial. Supposing he had a talk with Mr. Ford or Joe Bush or something?

The Master: It is probably a preliminary question. I will leave it on the record until I see how it develops.

Q. (By Mr. Cooper) Looking over that exhibit, does that in any way refresh your recollection—

A. (Interrupting) Yes, it does.

Q. (Continuing) —as to—

Mr. Lamb (Interposing) Just a second.

The Master: Just a minute.

Q. (Continuing) —as to whether or not provisions are or are not made in collective contracts as to the use of time clocks?

Mr. Lamb: Objection.

The Master: Can you show the witness an exhibit not in evidence to refresh his recollection?

Mr. Nunneley: Surely.

Mr. Cooper: Surely. It is common practice.

The Master: I guess that is so. I think that is true, you can do so if it refreshes his recollection independent

of the exhibit. I will overrule the objection.

A. Yes, it does.

Q. (By Mr. Cooper) Do collective bargaining agreements that you have seen contain provisions as to the use of time clocks?

Mr. Lamb: Objection.

A. Very seldom.

The Master: Just a minute. He has already testified on that. I will take his answer in the light of any refreshing document that has been shown to him.

A. I have never seen it in one, except this one.

The Master: Had you ever seen it in that before?

A. Yes, we discussed this at Mr. Landis' office.

Q. (By Mr. Cooper) What connection, if any, Mr. Wright, is there between shop rules and collective agreements?

A. Shop rules—

Mr Lamb (Interposing) Objection.

The Master: Overruled.

A. Shop rules are an addenda to an agreement. Shop rules in many instances are the clearance points, if I might say, of provisions of an agreement. They help to aid—they aid and assist in carrying out the provisions of an agreement. I know that every—

Mr. Lamb (Interposing) May I interject the question whether the witness is testifying that shop rules are part of an agreement or not part of an agreement?

A. They are usually considered part of an agreement between management and employee.

The Master: You can go into that on cross-examination.

Q. (By Mr. Cooper) In the ordinary practice, Mr. Wright, as you have observed it, what connection, if any, is there as to a provision in a collective agreement or shop rules as to the use of time clocks and the computation of hours worked?

Mr. Lamb: Objection. There are several questions involved in that one, of course.

The Master: Well, if he confines it too closely, it will be objectionable on the grounds it is leading. I think it suggests the subject matter to be testified to by the witness.

I will overrule the objection.

Will you read back the question?

(Question read.)

A. Well, the shop rule will provide that the starting time shall be at a specific hour, and then the ordinary practice is to compute the number of hours if the card shows the employee is actually within the plant during those hours. That is a standard practice.

Mr. Lamb: I ask the answer be stricken.

The Master: Denied.

Q. (By Mr. Cooper) By the way, do you know of any plant, Mr. Wright, that computes hours worked from the minute the time clock is punched?

A. In my experience, none.

Mr. Lamb: Objection.

The Master: Overruled.

Mr. Lamb: I don't see how it is material.

Q. (By Mr. Cooper): Let me ask you whether or not in the course of your collective bargaining negotiations you have ever heard any suggestion raised in that connection?

Mr. Lamb: Objection. What difference does this make? Supposing he sat in a meeting, part of a conference where it was discussed or it wasn't discussed? • • •

The Master: Well, I doubt very much its materiality. In fact, I can't see it. But, I will get the witness' answer, whatever it is, for whatever it is worth on the record.

A. I have seen nor heard of no such demands. • • •

Q. (By Mr. Cooper) Let me ask you this, Mr. Wright, is there any industry that does it that way?

Mr. Lamb: Objection.

The Master: I will take his answer to that.

Mr. Lamb: He hasn't knowledge, certainly.

A. None that I have knowledge of.

The Master: On that previous question I will hold that that is immaterial and exclude it, but simply leave it on the record pursuant to Rule 43-B again, or C, of the Rules of Federal Procedure..

Q. (By Mr. Cooper) Now, Mr. Wright, in the course of your work have you acquired familiarity with, or knowledge of, any collective agreements of shop rules?

Mr. Lamb: Objection.

A. Yes, I have.

The Master: Overruled.

Q. Mr. Wright, have you made any tabulation of clauses in collective agreements of shop rules?

A. Yes, I have.

Q. What is the document which has been marked for identification as Exhibit 92 (handing exhibit to witness)?

• • •

A. This is an excerpt from collective agreements and shop rules issued pursuant thereto with reference to hours of work and use of time clock.

Q. Did you prepare that exhibit? • • •

A. Yes, I did.

Q. (By Mr. Cooper) Do you have here, Mr. Wright, the documents on which you prepared that tabulation?

Mr. Lamb: Objection.

The Master: Overruled.

Mr. Lamb: We don't know that those are authentic documents.

A. Yes, sir

Q. (By Mr. Cooper) How did you acquire those documents that you have there?

Mr. Lamb: Objection.

Mr. Cooper: Let me complete the question for the record by referring to them as being marked as Exhibits 66 through 73, inclusive.

The Master: He may answer.

A. That marked Exhibit 72 I procured from Mr. Charles Miller, proprietor of the Michigan Steel Tube Products Company at his plant. This marked Exhibit 70 I pro

cured from Mr. Landis, assistant personnel director of Briggs Manufacturing at his office. This marked Exhibit 66 I procured from the personnel director of the Budd Manufacturing Company at his office. This marked 67 I procured from the personnel director of the Hudson Motor Car Company. This marked 71 I procured from Mr. Landis of the Briggs Manufacturing Company at his office.

The Master: How did you make your selection? Were you looking for particular pamphlets?

A. If I may answer that this way: During the normal course of events we drop in to see these personnel men, to see what they are doing, to naturally pick up some new ideas if you can, and you usually get into the discussion of their agreement, discussing of their shop rules, you get a copy of it, add it to your own file and to your own library as a reference later, something you may want to use later on.

The Master: In connection with this study of them, you haven't gone out particularly to these men to get these agreements? You already had them in your files?

A. Yes.

The Master: You already had them in your files?

A. Yes.

The Master: Were these the only agreements you have in your files?

A. No, I have over 200 similar booklets.

The Master: How did you happen to select these particular ones from the 200?

A. Because they were typical.

Q. (By Mr. Cooper) Can you state, Mr. Wright, whether or not the various documents you have before you, the numbers of which I referred to, commonly circulate among men engaged as labor relations advisers?

A. Yes, we have no difficulty getting them. They commonly circulate among us.

Q. Whether or not in the ordinary course of your business you acquire a number of such documents?

A. Yes, I must have 200.

Mr. Lamb: Objection to this.

A. Similar booklets.

The Master: Overruled.

Q. (By Mr. Cooper): For what purpose are they used, if any?

Mr. Lamb: Objection.

A. Study and reference.

Mr. Lamb: Just a second until he passes on the objection.

The Master: Overruled.

A. Study and reference. We read those just as lawyer might read a law book.

Mr. Lamb: That isn't any way of establishing—

Q. (By Mr. Cooper) Can you state whether or not—

The Master (Interposing) This is all preliminary, it seems to me, and I think he is entitled to ask the preliminary questions.

Q. (By Mr. Cooper) Can you state whether or not the printed copies, purporting to be copies of collective agreements and shop rules, are commonly accepted as copies by men engaged in labor relations work?

Mr. Lamb: Objection. What difference does it make whether they commonly accept it or don't commonly accept it?

The Master: Are you trying to identify these exhibits to show they actually represent the agreements and shop rules in force in the various plants by showing that they are commonly accepted and passed out?

Mr Cooper: Not that far, your Honor. I am attempting to identify these, and I propose to offer them as printed copies of contracts and shop rules which have a common circulation among men engaged in labor relations work, which are accepted and acted on as true copies of the contracts, and that I think such identification is sufficient to identify them for the purpose I have in mind as being a contract.

Now, if any question—and, as Mr. Nunneley suggests, as establishing the practice and the custom.

Now, on the particular question as to whether a particular contract is in force at a particular time at a particular company or whether since the publication of the document it has in any respect been changed, that, I think, is immaterial.

And, incidentally, I believe that all of them are current and that there has been no change. But that, I say, is immaterial on the question as to whether or not there has been some particular change or modification in a particular contract. That, of course, could be shown. I do believe, though, that we are identifying them and have identified them as being copies which are commonly used and accepted, and that they have been shown to represent typical copies of contracts and shop rules showing practice and custom as to provisions made therein with reference to the use of time clocks, and so forth.

And I offer in evidence the tabulation prepared by Mr. Wright, and as supporting the tabulation, the various documents, purported copies of contracts and shop rules which have been marked. • • •

The Master: Well, he can testify and I will take under advisement the question of whether or not it is necessary to prove their authenticity. • • •

Q. (By Mr. Cooper) Looking over Exhibit 92, Mr. Wright, I notice you have included certain provisions from collective agreements or shop rules, as to hours of work. For example, what provision is made in the collective agreement between Briggs Manufacturing Company and the UAAIW-CIO as to hours of work? • • •

Mr. Nunneley: We feel the Court should direct the plaintiffs to produce the originals of all the contracts, for the reason that the plaintiffs are an affiliate of the CIO, and I think almost every one of those contracts is an affiliate of the CIO, and they are things that they are peculiarly and immediately in a position to get hold of every one of them.

The Master: There is a question before the witness now, and I think you should make that motion later. I

will take that into consideration in determining whether or not I am going to require the authenticity of the documents to be proved by the defendants.

I don't want to confuse my mind with too many questions at once.

Read the question.

(Question read.)

A. It provides that each shift or group shall have a standard starting and quitting time, subject to demands of production.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled.

Q. (By Mr. Cooper) Is that sort of provision found in other collective agreements that you are familiar with?

A. Similar provisions; yes.

Q. What provision is made in the collective agreement between the UAW-CIO and the Budd Wheel Company, as to hours of work?

Mr. Lamb: Objection.

The Master: Same ruling.

A. There shall be a specific starting time, and quitting time. That the starting and quitting time may be changed where necessary to maintain continuity of employment by agreement of the committees and one or more members of the executive shop committee. Starting and quitting time shall be strictly observed, and employees shall not enter the plant more than 30 minutes before starting time.

Q. Is there anything unusual about that kind of provision in a collective agreement.

Mr. Lamb: Objection.

A. Nothing unusual.

The Master: Overruled. . . .

Q. (By Mr. Cooper) I was going to ask you, Mr. Wright, how many of the instances cited under that first sub-heading "Hours of work," are taken from collective agreements, and how many from shop agreements?

Mr. Lamb: Objection.

The Master: Overruled.

A. Three of them from collective agreements and one from shop rules.

Q. (By Mr. Cooper) Now, what is the name of the second sub-heading in this compilation?

A. "Use of time clocks."

Q. Do you find in there any "from any collective agreement as to use of time clocks?"

A. Collective agreement from the CIO-Briggs Manufacturing agreement.

Q. What provision is made in the CIO-Briggs Manufacturing agreement?

A. It provides that every employee must ring his clock card:

> "A. Before starting his time; B. At the completion of his work.
>
> "Employees must be in their departments ready for work when the signal is given for work, and must remain until the signal is given to quit."

Q. What provision is made in the shop rules in the Briggs Manufacturing Company as to use of time clocks?

The Master: I wonder if it is necessary to have the witness repeat everything that is in this exhibit?

Mr. Cooper: Perhaps not. If it is received, it will speak for itself.

The Master: It will be received just as readily as the testimony of the witness will be received, so that I think if he has prepared the exhibit, it speaks for itself, and it is unnecessary to ask the witness about it.

Mr. Cooper: I think we better put some of this in the record.

Mr. Nunneley: It will only take a minute.

Mr. Cooper: I am asking him about particular agreements that he is particularly familiar with.

The Master: Well, all right, go ahead.

A. The Briggs shop rules provide that: Employees will be assigned a clock or time card upon which they are required to register the time each working day as follows:

> "(1) Before starting work.

(2) Once during lunch period, (within 15 minutes prior to the end of the period).

(3) After completing work.

Employees failing to register time cards either in or out will be penalized one-quarter hour's time. Employees must be in their departments ready for work when the starting signal sounds, and remain at work until the signal sounds at regular quitting time."

Q. (By Mr. Cooper) Did you say once during the lunch period?

A. Yes.

Q. Is there anything unusual about that kind of a provision?

A. In the lots of times, no; because they may have so many men employed in there, and they may not have time keepers checking up during the day and the men may be, the employees may be doing an operation that don't require their being at their place of employment all the time, and in order to make sure that they are on the premises for the full working hours, they may then ring the time clock at noon. Smaller plants very seldom have such a rule.

Q. Well, would any time be deducted at noon?

A. There usually—they are usually penalized if they do not ring at noon, because in the afternoon, you see, the time keeper will come out and take the time cards out of the rack at noon and check up to see whether everybody has punched or not, and, of course, if the card is not punched, they immediately send in to the department to see whether the man is there. Of course, if he is there, then he has to give a reasonable excuse as to where he was and why he did not punch the time clock that noon.

Q. What can you say, Mr. Wright, as to whether the provisions you read from the Briggs agreement and shop rules are unusual or typical?

A. They are nothing unusual about them. They are typical rules in force in the plants.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled.

Q. (By Mr. Cooper) Is there also a final sub-heading on the Exhibit-92 as to certain miscellaneous clauses relating to computation of hours of work?

A. Yes.

Q. I ask you whether or not a number of those miscellaneous clauses relate particularly to cases of an employee coming in after the regular starting time?

A. Yes.

Mr. Lamb: Objection.

The Master: Overruled.

Q. What is a typical sort of provision for that case?

Mr. Lamb: Objection.

The Master: Overruled.

A. Some companies divide the work into quarters, and some into sixths, and they will penalize the employee for anything up to 10 minutes of tardiness. Where they divide the hour into quarters. Of course, it is up to 15 minutes or one-quarter of an hour for tardiness.

The Master: Are these provisions of shop rules or of the collective bargaining agreements?

A. Shop rules.

The Master: Are they provisions of shop rules that are drafted pursuant to the provisions of agreements which state that they must be taken up with the grievance committee?

A. Yes.

The Master: As well as the other type?

A. Yes, as well as the others.

The Master: All right, go ahead.

Q. (By Mr. Cooper): Does Exhibit 92 indicate any particular provision as to computation of hours of work in the collective agreement between the United Mine Workers and Coal Operators Association?

A. Yes, on page 3.

Mr. Lamb: Objection.

The Master: Overruled, with the understanding that

or subject to the general understanding under which this testimony is being received.

Q. (By Mr. Cooper) And what provision is made in that connection in that particular agreement?

A. "7 hours of labor shall constitute a day's work. The 7-hour day means 7 hours' work in the mines—"

Mr. Lamb: Just a second. Is that in this exhibit?

A. Yes, page 3.

Mr. Lamb: Page 3.

A. (Continuing) "at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those mine workers required on account thereof; and also excepting that number of mine workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

"Drivers shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named. The method at present existing covering the harnessing and unharnessing of mules shall be continued throughout the life of this agreement.

"Motormen and trip riders shall be at the passway where they receive the cars at starting time. The time required to take motors to the passway at the starting time and departing from the same at quitting time, shall not be regarded as a part of the day's labor, their time beginning when they reach the change or parting at which they receive cars, but in no case shall their time be docked while waiting for cars at the point named." • • •

Q. (By Mr. Cooper) Mr. Wright, in the course of your work, have you ever had any occasion to examine the actual time clock cards in factories?

A. I have, Mr. Cooper.

Q. What has been the occasion of such examinations that you have made?

A. Oh, various reasons. Sometimes a dispute of computation of hours worked, and sometimes to examine the clock as to the proper punching. Sometimes compiling as to the number of employees that go through a clock at a stated hour as shown on the cards. I perhaps have examined 10 or 12 thousand cards in years gone by.

Q. Over what period of time have these studies of time cards extended?

A. 20 years.

Q. Down to how recently?

A. Yesterday afternoon, a grievance procedure, a man claiming overtime that the clock didn't show.

Q. Now, showing you, Mr. Wright, Exhibits 3-F, 35-F, 62, 63-EE, 1-LL, 31-LL, 34-KK, which have been hitherto identified as certain time clock cards, and ask you to examine the punchings as shown on those cards, and state how they compare with the ordinary time clock cards that you have observed?

Mr. Lamb: Objection.

The Master: Overruled.

A. I would say that they were typical time clock cards.

The Master: We will take a very brief recess here

(Recess.)

Q. (By Mr. Cooper) On the basis of your observations, Mr. Wright, is there anything unusual about an employee punching in a time clock at 14 minutes before a starting time every day for 2 weeks in a row?

Mr. Lamb: Objection.

The Master: Overruled.

A. I wouldn't say there was anything unusual about it. I found at times where personal observations over weeks and periods at a time, that almost the same employees punched in at the same, almost at the same minute each morning. Now, that is brought about because you don't permit them to go into the plant except 15 minutes

before starting time, and they are congregated around the time office, and just as soon as the time to punch in arrives, they start together to punch their clock. Now, if 30 men go through a minute, that man don't necessarily have to be first in line each morning. He may be 5th or 10th or he may be 29th, and still punches in at 14 minutes of.

Mr. Lamb: I ask the answer be stricken.

The Master: Overruled. • • •

Q. (By Mr. Cooper) What is your observation, Mr. Wright, as to the usual and customary practice in the State of Michigan relative to the use of time clocks?

Mr. Lamb: Objection.

The Master: Overruled.

A. Well, time clocks are generally used. I know of very few plants that don't have time clocks, even as many as or as little as 15 employees maintain a time clock, even though it may be an old style tripper that is 20 years old. The practice is to issue each employee a card, making the employee responsible for that card, making him responsible for the punching of that card, and should any mistakes arise immediately that employee must report to his superiors any mistake noted on the card.

Q. What is your observation, Mr. Wright, as to the usual and customary practice in the State of Michigan as to computation of hours worked from the time clock cards?

Mr. Lamb: Objection.

The Master: Overruled. • • •

A. The hours worked for which wages are paid are usually computed from the specified starting time to the specified quitting time as shown on the time card. The card will show from three to 14 minutes punched prior to the starting time, and will show the same amount after the quitting time.

Q. (By Mr. Cooper) What is your observation, Mr. Wright, as to the usual and customary practice in the State of Michigan with reference to any requirement as to where a worker is required to be at the regular starting time?

Mr. Lamb: Objection.

The Master: Overruled.

A. The usual demand of the employer is that the worker be at his place of employment, at his bench or his place of work, at starting time, and he shall not leave there until the signal is sounded for the quitting time.

Q. I would like to ask you, Mr. Wright, whether or not the usual and customary practices which you have just described with reference to the use of time clocks and the computation of hours worked, and the requirement of being at one's place of work ready for work, are usual and customary in plants that you know of, about operating under collective agreements with unions?

A. Yes, sir.

Mr. Lamb: Objection. It would be immaterial and leading.

The Master: Overruled.

A. Yes, it is customary.

Q. (By Mr. Cooper) Does that include the plants whose agreements or shop rules are referred to in Exhibit 92?

A. Yes, it does.

Mr. Lamb: Objection.

Q. (By Mr. Cooper) Does it include other plants?

Mr. Lamb: Objection.

A. Yes, it does.

The Master: Overruled again.

Mr. Cooper: Cross examine.

The Master: Just a minute. I had a question if I can think of it.

You stated that in forging plants, that some of the employees would make a complete change in clothing when they went in the premises?

A. Yes.

The Master: Have you had enough—

A. Forging foundries.

The Master: Forging foundries?

A. Yes.

The Master: Have you had enough experience at those

plants to know whether or not that is usually computed by the employer as being on the employer's time or on the employee's time?

A. It is on the employee's time; even to the extent that—well, particularly in foundries an employee often gets tools and equipment from the tool room prior to starting time, the actual computed time.

The Master: And you state that that is on the employees' time?

A. Yes, sir.

The Master: I had another question following that up; I can't think of it offhand. You may proceed with cross examination.

Cross Examination

By Mr. Lamb:

Q. What was your business address, please, Mr. Wright?

A. 1951 Union Guardian Building.

Q. Would you tell us when you observed the conditions at the Mt. Clemens Pottery plant?

A. I have not been at the Mount Clemens Pottery plant.

Q. Never?

A. Never; other than to drive by it.

Q. So you are not able to tell us how the employees punch their clocks?

A. I am not.

Q. Or whether or not they are instructed to proceed immediately to work?

A. I am not.

Q. And you are not able to tell us whether or not the employees do, in fact, punch their time clocks, and within a minute or two get into productive work?

A. I am not able to tell you.

Q. So not being able to tell us what the practice is at the Mt. Clemens Pottery plant in respect to these employees, and what the practice is, you are not able to

tell us whether their practices are typical of the practices of industrial plants anywhere else, are you?

A. Not knowing their practices, I am not.

Q. You are not able to tell us whether or not the practice followed by the Mt. Clemens Pottery plant is similar to or typical of, or identical with—

A. No.

Q. —any other plant in the United States, are you?

A. I am not.

Q. And you are not able to tell us, are you, whether or not the employees take off their coats and hats and prepare themselves for work before punching the time clock in the Mt. Clemens plant, are you?

A. I don't know what their practice is, I am not.

Q. So you don't know whether that practice differs from the practice in other plants about which you may have testified?

A. Well, if that is the practice there, it don't differ from some other plants.

Q. I see. But I am asking you whether you are able to tell us whether the practice followed by the employer and employees in the Mt. Clemens plant is similar to that in other plants.

A. I don't know their practice, other than what you have just stated.

Q. So you wouldn't be able to tell us—

A. No.

Q. —what the practice is, so you wouldn't be able to tell us whether that is typical or similar to the practice followed in other plants?

A. Except if that is their practice, it is not unusual.

Q. Not unusual to prepare themselves for work before—

A. No.

Q. —going through the time clock?

A. No.

Q. You are not able to say whether or not the employees do at the Mt. Clemens plant?

A. No, I can't.

Q. Now, you are not able to tell us what the practice

is in respect to continuing work in the Mt. Clemens plant up to the 14 minutes after, for instance, the noon hour?

A. No.

Q. Or the time when they come back to employment from their noon recess 14 minutes before the hour that they proceed immediately to work, then?

A. No.

Q. And you are not able to tell us whether there is a starting whistle or bell or a gong in the Mt. Clemens plant, announcing the time when the employees' starting time is?

A. No, I am not.

Q. When you testified about employees at other plants who may work up to a starting time as represented by the blowing of a whistle, you didn't intend to convey to the court any inference that that was the practice at the Mt. Clemens plant? • • •

Q. (By Mr. Lamb) Do you know what type of time clocks they have at the Mt. Clemens plant?

A. I do not. There are only four types manufactured.

Q. I am asking you if you know the type in the Mt. Clemens plant, pottery plant?

A. I do not.

Q. Do you know the number of employees who pass through the time clocks of the Mt. Clemens Pottery Company?

A. I do not, but if they have a standard clock there, there wouldn't be any exception to the average.

Q. Do you know how many pass through the time clocks at the Mt. Clemens Pottery plant?

A. I do not.

Q. And you don't know whether they go through in single file or double file?

A. I do not.

Q. Therefore, not knowing what the procedure followed at the Mt. Clemens plant, pottery plant, is in that regard, you cannot say whether that procedure is similar to or different from that followed in other plants; is that correct?

A. No, I couldn't.

Q. You don't know—I will put it in the negative fashion. Are you aware of the starting of a belt, production belt, at the Mt. Clemens plant prior to starting time?

A. I am not.

Q. You have no knowledge of that fact?

A. No knowledge of it.

Q. And you are not aware, therefore, that the employees of the Mt. Clemens plant after punching the time clock are in their places of productive labor within a minute or three minutes from the time when they punch the time clock?

A. I am not aware of that, Mr. Lamb. • • •

Q. (By Mr. Lamb) You are not able to say, are you, Mr. Wright, as to whether the employees of the Mt. Clemens Pottery Company go to the plant, go to the cloak room, prepare themselves for productive labor, punch the time clocks, within a minute to two minutes are engaged in actual physical productive work, and that they begin their actual productive work at least several minutes prior to what is labeled a 7 o'clock, for instance, starting time?

A. Part of your question, Mr. Lamb, I would say is an impossibility. Starting work within one or two minutes after punching a clock, that just isn't in the cards. I have observed thousands of working men, and I have never been able to see the fellow that has been able to say that yet. We certainly would like to find that fellow in industry.

Q. Well, that is interesting. Now, do you say that you know something about this practice in the Mt. Clemens Pottery Company?

A. No, I don't. I am just taking your question. Part of your question is an impossibility.

Q. Okay. Now I will thresh that out with you. Do you say that it is a physical impossibility for the employees of the Mt. Clemens Pottery Company who work next to the time clock, for instance, not to punch their

time clock and wheel a brush within a minute, or a few seconds, after punching the time clock?

A. If you are working next to the time clock it is possible.

Q. O. K. Now, if they walk for a minute, isn't it possible after punching a time clock at the Mt. Clemens Pottery plant to wheel a brush if the distance between the time clock—

A. (Interrupting) I—

Q. Wait a minute until I finish this question. We understand what you may want to testify to.

The Master: Finish your question.

Q. Do you say that an employee who punches his time clock and walks for one minute cannot be wheeling a brush at the end of that minute?

A. I don't think it is possible.

Q. O. K. Were you instructed to say that?

A. I know nothing of the procedure of the Mt. Clemens Pottery plant.

Q. Who are you hired by to testify in this case?

A. Mr. Cooper.

Q. You didn't tell us the name of your organization with which you are associated?

A. I am an individual. • • •

Q. Did you say that—did you give us the names of the companies you represent?

A. No, I didn't.

Q. Will you give us the names?

A. H. and H. Tube Company; Detroit Rendering Company; Darling & Company; Progressive Welder Company; Hydromatic Manufacturing Company; Acme Foundry; Call Foundry; Stewart Foundry; Grand Rapids Chair Company; Owosso Manufacturing Company. • • •

Q. Now, I would like to have you answer this question. Do you say that an employee of the Mt. Clemens Pottery Company has not punched the time clock and begun work within one minute after the time?

A. From my observation—

Q. From your personal observation

A. —over a period of years—

Q. (Interposing) From your personal observation at the Mt. Clemens Pottery Company?

A. Not at the Mt. Clemens Pottery Company, no. I haven't been in the Mt. Clemens Pottery Company.

Q. You have no personal knowledge of that at all?

A. No.

Q. So you are not able to tell us?

A. No.

Q. Whether or not an employee of the Mt. Clemens Pottery Company, who is instructed to report at work at 6:46, for instance, and does so report and punch his time clock, you are not able to tell us from any personal knowledge—

A. No.

Q. —whether or not it is possible for that employee to be in productive labor within a minute or two—

A. No.

Q. —after punching the time clock?

A. Having never made that observation there, no.

Q. Do you know the type of work that these people do at the Mt. Clemens Pottery Company?

A. I have a fair idea.

Q. From your personal observation?

A. I have a fair idea because of the nature of the name of the company and the type of material they manufacture. I have never been very closely associated with pottery companies.

Q. Do you know what the sagger operations are?

A. No, I don't.

Q. Or operations on the saggers?

A. No.

Q. Or brushing or finishing?

A. No, I don't.

Q. And you don't know that the brusher can be actively operating on her work immediately upon her picking up a brush and going to work, do you?

A. No, I don't.

Q. Have you ever testified before in a wage and hour case?

A. Never in a wage and hour case, no.

Q. Do you attempt to advise people—

A. No, sir.

Q. —on the Wage and Hour law?

A. I have nothing to do with the Wage and Hour Labor relations entirely.

Mr. Lamb: That is all.

Re-Direct Examination

By Mr. Cooper:

Q. From your observation, Mr. Wright, how long on the average does it take after an employee punches a time clock before he starts work?

Mr. Lamb: Objection. He can't testify as to that.

The Master: I think he may be able to.

Mr. Lamb: It is what happened here that we are interested in.

The Master: There is a dispute in this case as to what happened. What happens generally may have some weight in deciding that dispute. I will take his answer.

A. Depending upon how far they have to go after they have punched the clock to their place of employment or their place of work; and, of course, depending upon what the nature of the work is. I would say out of my experience I have seen men that would punch a clock 12 minutes before starting time, go in and congregate around in groups all around their immediate place of work, some will even oil their machinery; others will go to the stockroom and pick up tools and equipment that they use in their ordinary line of work before they go to their place of work.

It has been my observation that men like to go in and congregate around their place of work for a few moments before starting work. And that, perhaps, is the reason for the answer to counsel that it was an impossibility for

a man to start work one minute after they punch the time clock. I have never seen it yet.

The Master: What do you say is the minimum you have observed?

A. Oh, anywhere from 6 to 8 minutes. We figure at a plant a man that punches the time clock at five minutes of don't get started at the starting time.

The Master: Suppose the man is a regular early-riser on a 7 o'clock shift and is usually there 14 minutes of the hour and happens to be late and gets there at one minute to 7:00, do you say it is impossible for him to rush over there and start work on time?

A. Absolutely impossible. It just isn't in the cards.

The Master: Supposing he was very conscientious and was very disappointed, because of some accident that happened he was unable to get there in the morning until a minute before work, so that he made every effort possible to get to work when the whistle blew.

A. I don't think it would be possible. Honestly, I don't. Even if he only had to walk across the room to go to work; because it takes a second to open his toolbox, take his tools out; he may want to change his shoes, get gloves out of a drawer he has them in; he may want to get something he works with. That all takes time to do. It just isn't in the cards.

Q. (By Mr. Lamb) Don't you consider a man who is getting his tools sharpened or in shape at that time, that time working?

A. No.

Mr. Cooper: Objection. That is a question of law.

The Master: Well, I will let it stand.

Let me ask you this, do I understand you to say that—I don't know that you testified directly on it at all, but I can imagine what your testimony will be from other testimony you have given—is the work of an employee or the activity of an employee in cleaning up at the end of the day's work, usually on the employee's time or on the employer's time?

A. That is, you mean cleaning his person?

The Master: Cleaning his person, yes.

A. That is his own time.

The Master: Are you familiar with the conditions at the Hudson Naval Arsenal plant?

A. No, not very well.

The Master: In the Hudson Motor Car Company?

A. In the Hudson Motor Car Company, yes. They stay at their bench until quitting time, and then clean up afterwards. No plant permits cleaning up prior to whistle time, because, let's look at the thought. You need discipline in the plant. If you are going to permit them to take five minutes off, tomorrow it will be 10, and the next day it is 15 minutes, and you have to have a rule, and you can't deviate from that rule.

Q. (By Mr. Lamb) You mean oiling machinery and cleaning it up?

A. No, we are talking about cleaning the person.

Q. That is all done on the employee's time?

A. Not always. We were talking about—

The Master: I was asking about cleaning up the person, washing off the grime.

Q. (By Mr. Lamb) You said, I think, that in some plants employees do prepare themselves for work on their own time before punching the time clock, and in some plants that is not true?

A. Yes.

Q. And you are not familiar with which practice is followed in the Mt. Clemens plant?

A. I am not a bit acquainted with the Mt. Clemens procedure.

Mr. Lamb: That is all. • • •

CHARLES E. DOLL, JR., was thereupon recalled as a witness, and being previously duly sworn, testified further as follows:

Re-Direct Examination

By Mr. Cooper:

Q. I hand you, Mr. Doll, what has been marked for identification as Exhibit 93, 93-A through 93-Y, and ask you if you can state what those documents are?

A. Exhibit 93 to 93-Y are the time cards of Floyd Pearl from the pay ending January 9, 1940, to December 31, 1940.

Q. What department did he work in during that period?

A. Floyd Pearl worked in the glost belt system.

Q. I show you what has been marked for identification as Exhibit 94, 94-A through 94-Z, and ask you to identify those documents (handing exhibits to witness)?

A. Exhibit 94 to 94-Z are the time cards of Harry Lozen for the pay ending January 9, 1940, to the pay ending December 31, 1940.

Q. And I show you what has been marked as Exhibit 95 and 95-A through 95-P and ask you if you can identify them (handing exhibits to witness)?

A. Exhibits 95 to 95-P are the time cards of George Leibziet.

Q. And is there—

The Master: Pardon me. What pay periods?

A. Pay period from September 10, 1940, to April 8, 1941.

The Master: Did he just begin work there during—do you know, on September 10, 1940

Mr. Cooper: Perhaps I could clear that up, your Honor.

The Master: All right.

Q. (By Mr. Cooper) Is there any indication, or can you state from your examination of the record, Mr. Doll, as to when Mr. Leibziet became employed by the company?

A. George Leibziet went to work for the company in September, 1940.

Q. And can you state what department he was employed in in September, 1940?

A. He went to work in the clay department.

Q. Can you state or ascertain whether he subsequently became employed in the glost belt department?

A. These time cards show that he went to work in the glost belt department for the pay ending January 14, 1941.

Q. I don't believe I asked you what department Harry Lozen was employed in during the year 1940?

A. In the glost belt department.

The Master: Is that all?

Mr. Cooper: Yes, that is all. We produced him for Mr. Lamb's examination at his request, and we have had him identify these exhibits.

Mr. Lamb: And the ones of Nick Dacko were identified before.

Mr. Cooper: Yes.

The Master: Does either side want to offer these exhibits, or do you want to use them in a subsequent examination?

Mr. Nunneley: Mr. Lamb asked for them.

Mr. Lamb: Yes, I am perfectly willing to.

The Master: Any objection?

Mr. Nunneley: No.

Mr. Cooper: Has he offered them? No objection.

The Master: I will admit them. Let me ask this one question.

Do you have the hand punch type of time clock or the electric type in the plant?

A. At the period of this action we had electric clocks but of the lever type.

The Master: You mean that the employee had to punch or push a lever with his hand in order to operate the time clock?

A. After inserting the card in the clock he pushes a lever.

The Master: The electric part simply had to do with the mechanism of the clock?

A. That is correct. Motor-operated. . . .

June 25, 1942

JAMES RANDOLPH DOLL, was thereupon called as a witness on behalf of the Defendants, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Cooper:

Q. What is your address, Mr. Doll?

A. 207 Moross Avenue, Mt. Clemens.

Q. Are you employed by the Mt. Clemens Pottery Company?

A. Yes.

Q. In what capacity?

A. At the present time I am Personnel Director and in charge of the orders, and the shipping department, also.

Q. How long have you held that position?

A. Personnel Director since May, 1941.

Q. And what was your position there during the period from October, 1938, up until April of 1941?

A. I was in charge of the orders and the shipping department, and I arranged what types of ware were to be

made on the basis of the orders, and what was to be done with the ware as it came through the plant, how it was to be decorated and what colors it was to be dipped in, and so forth.

Q. How long have you been connected with the pottery company, Mr. Doll?

A. Since 1927.

Q. Are you related to Mr. Charles E. Doll, Sr.?

A. Yes, I am his son.

Q. Mr. Doll, in connection with your work, are you familiar with the time clock records of the Mt. Clemens Pottery Company?

A. Well, prior to May of 1941 I had practically nothing to do with them, but I have familiarized myself with the records of that period subsequent to that time.

Q. What records, if any, of the company would show how many individuals punched in during a particular 14-minute period on any day?

A. The cards themselves would show that.

Q. Now, how, if at all, is it possible to ascertain the particular minute during such a 14-minute period when each individual punched in?

A. That will show on the card.

Q. How, if at all, can it be determined whether all the individuals punching in during a particular 14-minute period used the same time clock?

A. By the number; by the card number.

The Master: Can you tell from these time clock cards the department in which the individual worked?

A. No, not directly.

Q. (By Mr. Cooper) Have you made any studies or analyses of the time clock records of the Mt. Clemens Pottery Company during the period involved in this action?

A. Yes. I have gone through some of the cards.

Q. In that connection, Mr. Doll, I show you what has been marked as Defendant's Exhibits 97, 98 and 99, and ask you to identify those, if you can; state who made

them, and explain to the Court, if you know, how they were prepared (handing exhibits to witness).

A. Well, these are the results of some of the studies that I made of the time cards, and they show the number of people that rang in on a clock during a given minute on a certain day. And, the information is shown right on the sheet. * * * *

The Master: How did you pick the shifts on which you were going to make your tabulation?

A. The shifts?

The Master: Well, the shifts and the date?

A. Well, there wasn't any particular reason for picking the shift. I took a time in which there would be a fair number of people going in at one time, and as far as the dates go you will notice that there are time clock cards available, the earliest ones are in November of '39, and I have one there, and then I took one which came in January of '41, which would be a much later period, and then this one (indicating) is somewhat in between.

The Master: Are these the only computations of this sort you made for these 3 days, or did you make them for a large number of days and pick these three out?

A. No. It takes quite a while to do it, and the time is limited, and I prepared these.

The Master: And none others?

A. That is right.

The Master: Did you select the dates just arbitrarily, or did you have some reason for selecting them?

A. Well, as far as the particular day in this given month is concerned it was a question, the location of the ring on the card was a convenient place to pick them out.

The Master: Did you go through all the time clock cards for each of these days? Does this include the whole plant or include certain departments?

A. It includes all on that particular clock.

The Master: Which clock is that? * * *

A. Well, this would be time clock B, then.

The Master: The south clock?

A. Yes.

The Master: There were two clocks at that point during the date covered by one of these—no.

A. No, I don't believe so. • • •

Q. (By Mr. Cooper) I think you spoke in answer to one of the Master's questions, Mr. Doll, of the location of the ring-in having something to do with the dates that you have. Was that the phrase that you used?

A. (No response.)

Q. If I understood you correctly, I thought you could explain, perhaps, what that phrase would mean.

A. I don't recall the statement that I made.

The Master: What you said was, I asked you how you happened to select these particular dates, and you said that you selected certain months, and then as to the date in the month, you determined that by getting a convenient—or a date that had a convenient position on the time clock card, as to the time rung in in the morning, so you could readily read it.

A. Well, yes. In the case of two of these, it was the top line, and I took that so that if I took a line down further on the card, I might become confused in going through so many. And the other one, on January 3 it was further down on the card because they started in an odd time on the card anyway; the first of the year ring didn't come at the top of the card, and so I just took one that suited my convenience.

The Master: That is January 3, 1941, you are referring to?

A. Yes.

Q. (By Mr. Cooper) Can you state, Mr. Doll, the meaning of the figures in the left-hand column on each of these exhibits 97, 98 and 99?

A. That is the minute, or the time.

Q. For example, 6:46 means 6:46 A.M., is that right?

A. Yes.

Q. And is that true of each of the exhibits?

A. Yes.

Q. 97, 98 and 99?

A. Yes.

Q. Then I notice in the center of the page of each of those exhibits there are character lines set up in groups of five. Could you explain what those mean?

A. Each one of the lines represents a ring by an individual employee.

Q. And the right-hand column of each table is headed, "Total," and under that column opposite each minute period there is a figure. Could you state what those figures represent?

A. That figure is the total number of marks on that same line, which result would be the total number of employees that rang in that minute.

Q. And what is represented by the total figure of that column?

A. That is the total number of employees that rang in during the 15-minute period shown.

Q. Now, do you know whether or not all of the employees whose ring-ins are indicated on each of those tables used the same time clock?

A. Yes.

Q. Do you know whether or not there were any other employees who used that time clock during that 14-minute period on the respective days?

A. I went through all the cards for that—that would be covered by that clock and took every ring that was on there, and I don't know of any that would be rung that I wouldn't have gotten.

Q. Did the cards include the cards both of those who signed the designation or are named in the suit, and the cards of all the other employees in the plant?

A. Yes.

Q. And, if you remember, approximately how many cards were there in each of the three packs you examined?

A. Well, I didn't count them, but from the size of the pack, I would judge that there were 450 to 475.

Q. Now, do you know some of the departments that would be represented by the punch-ins indicated on those tabulations?

A. That would be the brushing and the dipping, and all of the glost belt, the glost ware room, and packing.

Q. Then, to sort of sum it up, can you state, sir, whether or not each of those exhibits shows the number of persons punching in at the same time clock at each minute during the 14-minute period indicated for the days indicated?

A. Yes.

Q. And I am not sure whether you stated on the record the dates of the three exhibits?

A. The first is November 8, 1939; July 17, 1940; January 3, 1941.

Q. Did you prepare those exhibits in response to anyone's request?

A. Yes, I prepared them in response to your request; Mr. Cooper's request.

Q. And what was my request of you?

A. You requested that I go through some of the time cards, and prepare a table showing the number of people that rang in during a given period of time.

Q. What instructions, if any, did I give you as to the dates to be used?

A. None whatever.

Mr. Cooper: If the Court please, I offer the exhibits which have been marked as Exhibits 97, 98 and 99, being tabulations of very voluminous records, which have been prepared in the manner that has been quite fully testified to by the witness. • • •

The Master: Well, I will admit the exhibits.

Mr. Lamb: I don't think they are material at all. • • •

Q. (By Mr. Cooper) Do you know, Mr. Doll, whether or not there are in the plant of the Mt. Clemens Pottery Company certain employees known as kiln firemen?

A. Yes.

Q. Is it their job to get the cars of ware through the kilns?

A. Primarily, yes, I would say.

Q. Are you familiar, Mr. Doll, with the basis upon which the kiln firemen were compensated during the period involved in this action?

A. Yes. I have made it my business to determine and find out how they were compensated.

Q. Now, can you describe to the Court in a general way what the basis of their compensation was?

A. They were paid at a given rate for each car that passed through the kilns, and, that is, that the entire group of kiln firemen were paid for a given number of cars that passed through the kilns, and the sum of money that the group earned was divided among the kiln firemen in proportion to the number of hours that each man worked during the pay period.

Q. Whether or not, if you know, the compensation of the kiln firemen depended in any way on the number of cars which his crew put through the kilns during his 8-hour shift?

A. No, it didn't matter. It was entirely dependent upon how many the group as a whole handled in a pay period, and then it was divided among the men the proportionate number of hours they worked.

Q. How many hours a day, do you know, did this department or division comprising the kiln firemen, operate?

Mr. Lamb: Objection.

The Master: Overruled.

A. It is a continuous operation; 24 hours a day, 7 days a week.

Q. How many shifts a day?

A. 3 shifts.

Q. How many men would there be on each shift?

A. Four.

Q. Now, Mr. Doll, have you made any study of the time clock cards of the kiln firemen?

A. Yes, I have.

Q. I show you what has been marked for identification as Exhibit 100 and 100-A and ask you in the first

place whether or not you recognize that (handing documents to the witness)?

A. Yes, I prepared the figures for these exhibits.

Q. And can you describe to the Court the several columns in this exhibit, explaining how the exhibit was prepared by you and was shown by the various columns which you have set forth?

A. Each of these exhibits covers a full pay period. The dates are shown in the right-hand column. The first column indicates the time that the four men on the shift rang in. The second column shows the starting time of that shift. The third column shows the time the shift ended, and the fourth column shows the time that the four men punched out.

Q. Is that the same time for all of the four men, or is it different times that each of the four men punched out?

A. Each figure represents the time of one man; in other words, there were three men that punched in at 10:55 and one at 10:47. • • •

A. The fifth column shows the time that the four firemen on the next shift rang in.

The next column shows the starting time of that shift.

The next column shows the time the shift ended.

The next column shows the time that the four firemen rang out.

The next column—

Q. I wonder if, for the purpose of the record, the columns could be numbered, as you go across, describing just from here on; I think you have numbered several of them?

A. The 9th column shows the time that the four firemen on the next shift rang in.

The 10th column shows the starting time of that shift.

The 11th column shows the stopping time of the shift.

The 12th column shows the time that the four firemen rang out.

Q. And how does the general character of the top sheet, marked Exhibit 100, compare with the general outline of the second sheet, marked Exhibit 100-A?

A. Why, it is the same except on the one marked 100, that time of day was started with the 11 o'clock shift, and the one marked 100-A the day was starting with the 7 o'clock shift.

Q. On Exhbiit 100, in column 2, under the title, "Shift began," there appears the figure 11. Is that 11 A. M. or 11 P. M.?

A. That is 11 P. M. of the date preceding the date in the right-hand column.

Q. And the figure appearing under the 3rd column, headed, "Shift ended" is 7. Is that 7 A. M. or 7 P. M.?

A. That is 7 A. M. of the day shown in the right-hand column.

Q. In this case, November 28, 1939?

A. Yes, that is right.

Q. And in column 6 the first figure under the heading, "Shift began," is 7?

A. 7 A. M.

Q. And in the next column, the first figure under the title, "Shift ended" is 3?

A. 3 P. M.

Q. And in column 10 under the heading, "Shift began," the first figure appearing is 3?

A. 3 P. M.

Q. And the next column under the heading "Shift ended," appears the figure 11?

A. 11 P. M.

Q. And all of those hours, except for the 11 P. M. in column 2, are hours under date of November 28, 1939, is that right?

A. That is right.

The Master: Do these four firemen constitute one crew, as you call it?

A. Yes.

The Master: And they work on one kiln?

A. No, there are four kilns.

The Master: There are four kilns?

A. Yes.

The Master: One fireman to each kiln?

A. That is right.

Q. (By Mr. Cooper) Does that tabulation—and this will clear it up—include all of the clock cards for that work for the period covered by the tabulation?

A. Yes.

Q. I think you testified as to who prepared it?

A. I prepared it.

Q. And from what it was prepared?

A. It was prepared from the clock cards. • • •

Mr. Cooper: I offer, if the Court please, Exhibits 100 and 100-A.

Mr. Lamb: Was there any particular reason for the choice of the dates that are mentioned on Exhibits 100 and 100-A?

A. One is at the beginning of some of the oldest cards we had, and the other one is some of the last time cards we had.

Mr. Lamb: Do I understand that this covers all of the group of four men—

Mr. Nunneley: I can't hear the question.

Mr. Lamb: Excuse me. Do I understand that these two exhibits cover the time clock records of all of the four men in the kiln—who operate as kiln firemen?

A. It covers all of the records for kiln firemen. There would be more than four men, because there were three shifts. There were only four men on at one time. • • •

Mr. Lamb: In other words, it takes care of all of the kiln firemen for the pay period?

A. That is right.

Mr. Lamb: On all shifts?

A. That is right.

The Master: And that is a two weeks period, of course?

A. Yes, sir.

Mr. Lamb: Did you break it down into the workweek?

A. It is there by days, the table is; prepared by days.

Mr. Lamb: In other words, you have taken each day of a two-week period, is that correct?

A. That is right.

The Master: You can't tell from your exhibits here which of the firemen were working at the bisque kilns and which were working at the glost kilns?

A. No, you can't, Mr. Quaife.

The Master: Let's see, those working at the bisque kilns and the glost kilns, do they both come in at the north time clock?

A. South.

The Master: At the south time clock. They both came in at the same time clock?

A. Yes.

The Master: But the bisque kilns are considerably farther distant from the south time clock than the glost kilns?

A. Yes.

The Master: Any further questions?

Mr. Lamb: I want the record to show an objection.

• • •

The Master: Well, I will admit it for whatever it is worth. I would like to ask the witness, I notice that on the last column here there are a number of instances, or at least several instances where the employee punched out at 7 o'clock, and the shift ended at 7 o'clock. Can you account for that fact, how the employee was able to punch out the exact minute that the shift ended?

A. Well, any statement that I might make on it would be a supposition, not being present at the time.

The Master: Well, based upon your observation, you have observed the operation of the change in shifts subsequent to the time of this suit.

A. Yes.

The Master: Based upon that observation, can you account for that?

A. Well, the glost kilns are quite close to the time clock, and it would be possible for an employee, if he was all ready to leave, to be there before the minute was up when the shift ended.

The Master: Do you know whether there was a whistle blowing at 7 o'clock during this period, that is, 7 o'clock in the evening?

A. This is 7 in the morning, Mr. Quaife.

The Master: Oh, this is 7 in the morning?

A. Yes.

The Master: I beg your pardon. There was a whistle blowing at 7 in the morning?

A. Yes. • • •

Mr. Cooper: Would the Court permit the placing of the appropriate designation, either A. M. or P. M., after the first figure in the second column on each exhibit?

The Master: I think so. You can write it in in pen.

(The witness thereupon marked upon the exhibits.)

Q. (By Mr. Cooper) Mr. Doll, are you familiar with the basis on which the pressmen in the slip house are compensated?

A. Yes. I know how they are compensated.

Q. Describe the method on which their pay is computed?

A. The group is paid at a rate per dozen for the ware produced in the clay shop, and the money is divided among the group in proportion to the number of shifts each man has worked.

Q. Do you know how that particular method came to be adopted?

A. At the request of the men.

The Master: You have personal knowledge of that?

A. Yes.

Q. (By Mr. Cooper) Is that another 24-hour operation, Mr. Doll?

A. Yes. That is 24 hours for 5 days.

Q. And you spoke of groups. How many are there in the group in this category of pressmen in the slip house?

A. There are two pressmen on each shift.

Q. Under the basis of compensation that you have described, can you state whether or not the particular

number of hours and minutes that one of these members of a two-man crew in the slip-house has any relation to the amount that he earns for his day's work?

A. His pay was not directly related to the hours. It was directly related to the number of shifts that he worked.

Q. And, Mr. Doll, have you made a study or analysis of the time clock cards of the pressmen in the slip-house?

A. Yes, I have studied through some of those.

Q. And do the documents which have been marked for identification as Exhibits 101 and 101-A reflect the results of such study (handing documents to the witness)?

A. Yes.

Q. Can you describe, please, with reference to Exhibits 101 and 101-A, the method in which you prepared it and giving the headings of the four columns on each page and describing what is shown in each column?

A. The first column shows the dates. The second column indicates the time that the shift began, and the third column indicates the time the shift ended. The fourth column shows the time that one of the pressmen rang in. The fifth column shows the time the other one rang in. The sixth column shows the time that one of them rang out, and the seventh column shows the time that the other one rang out.

Q. And can you state, Mr. Doll, whether or not that computation covers all of the work of that type done in the plant during the periods involved?

A. Yes, it does.

Q. And, in general, can you say whether or not the method of preparation of it was similar to the method you employed in preparing Exhibit 100?

A. The figures were taken directly from the time cards.

Mr. Cooper: I offer in evidence, if the Court please, the documents marked Exhibits 101 and 101-A.

Mr. Lamb: Do I understand there are just two pressmen?

A. Yes.

Mr. Lamb: On a shift?

A. That is right, Mr. Lamb.

Mr. Lamb: And, therefore, how many pressmen do you have on three shifts in a 7-day week?

A. It is only a 5-day operation; it is 6 men.

Mr. Lamb: And as I understand it, the pay of these men is not based on the hours worked, but on the shifts they work?

A. That is right.

Mr. Lamb: What does a shift mean in that sense?

A. It is—if the men completed their work before the 8 hours had expired, their shift ended when they completed their work.

Mr. Lamb: And if it went over 8 hours they continued to work until the job was finished, is that it?

A. Yes, except that they couldn't work over the 8 hours because the other pressmen would be there ready to work and two crews couldn't be working at the same time.

Mr. Lamb: Are there ever occasions when they work 6 days a week?

Mr. Cooper: I think I will object to that question, if the Court please. It is a very broad one and it would include an examination of all the records covering the work of the pressmen in the slip-house over a period starting back in October, 1938.

The Master: No, he may know; he can state it; it is apparent that he is not now examining all of these records, he is asking him on the basis of his knowledge of the records. The witness can indicate the limitations of his knowledge.

A. Well, to my knowledge, they never did, but I wouldn't be positive.

The Master: You say that these two shifts can't both be working at the same time, there can't be overlapping?

A. No.

The Master: Is that based upon actual observation during this period of the change, the method used in changing shifts?

A. The two shifts couldn't be handling the same machinery at the same time.

Mr. Lamb: As I understand it, while you haven't personally observed it, it is possible that these pressmen in the slip-house could have worked 6 days in a workweek, could they not?

A. They could have worked 7, perhaps, if there had been occasion.

Mr. Lamb: What time clocks did they use?

A. They used the north "A."

Mr. Lamb: Well, on the basis on which you paid these men, assuming that they worked more than 40 hours, as I understand it, you state that these men are not paid on the basis of the hours worked, but were paid on the shift—

Mr. Cooper (Interposing): Are you finished with the question?

Mr. Lamb: No. And therefore it would be possible that these people would not be paid overtime?

A. Their cards—

Mr. Cooper (Interposing): I object to it, if the Court please. In the first place, the question is involved and I don't understand it. In the second place, I think it does not correctly state the testimony which the witness has given, and, of course, it goes 'way beyond the scope of direct examination, it is opening a subject matter that has nothing to do with identification of the table here.

Mr. Lamb: I am trying to find out if these particular exhibits are typical of others?

The Master: Read back the question.

(Question read.)

The Master: Frankly I have had that question in mind myself, and he was testifying as to the method of payment, and the question might not be stated so that the witness can understand it; if so, he can so indicate. I would like to know myself just how the company computed overtime for these men if they ever worked overtime, according to the company's method of computation.

A. Well, when the men actually were paid, a rate per

hour was computed based upon the number of hours that they worked, but the amount of money that they drew depended upon the number of shifts that they worked, so that you would find in the records that there was a rate per hour shown for the number of hours that they worked.

The Master: Do you know whether any of these men ever did work overtime according to the company's method of computation?

A. I don't know for sure whether they did or not.

The Master: If you don't know whether they did, you wouldn't know how they were paid if they did work overtime?

A. If they had worked overtime, they would have been paid for their overtime at the rate which would be computed by dividing their earnings by the number of hours shown on their time card. • • •

Q. (By Mr. Cooper) Suppose, for example, Mr. Doll, that during the course of a week the earnings of a pressman in the slip-house, computed on the basis you have described, was equivalent to $44, and assuming that the record of hours worked showed that that pressman had worked 44 hours during the week. Now, bearing in mind the annual earnings cards, a number of which have been introduced in evidence here, would a figure be written on the annual earnings card of that particular individual, indicating his hourly rate?

A. Of course his hourly rate would be $1 an hour.

Q. And if the record showed that during the work-week he had worked 44 hours at the regular rate shown, as you have described it, of $1, how much would he have been paid for the 44-hour week? • • •

A. I believe he would receive $1 an hour for 44 hours, and he would get 50 cents an hour for 4 hours.

Mr. Lamb: Well—.

Mr. Nunneley: Assuming it was a 40-hour week?

A. Yes, assuming it was a 40-hour week, I believe that would be $46. • • •

Mr. Cooper: Has the exhibit 101 been received?

Mr. Lamb: There is an objection to it.

The Master: I will admit it. Are you going through each one of these departments with a similar study? Is that the method you are following?

Mr. Cooper: Not all of them.

Q. (By Mr. Cooper) Do you have a group of employees in the plant known as boiler-firemen?

A. Yes.

Mr. Lamb: Boiler-firemen?

A. Yes.

Q. How many hours a day is that department in operation?

A. That is 24 hours a day.

Q. How many shifts a day?

A. Three.

Q. And how many individuals are employed on each of those three 8-hour shifts?

A. One on each shift.

Q. In any day you have three men each succeeding the other around the clock, is that right?

A. That is right.

Q. And is that department in operation 7 day a week?

A. For most of the year 7 days a week, warm weather they don't operate so much.

Q. Are you familiar with the basis on which the boiler-fireman is compensated?

A. They are paid a straight rate per hour.

Q. Do you know whether or not, Mr. Doll, the same crew of boiler-firemen have been on that job during the entire period involved in the suit?

A. No, there have been changes during the period involved in the suit.

Q. Did you examine the records and attempt to pick out periods of several months when you had the same crew on during a period of several months?

A. Yes.

Q. What period did you find that situation was true of?

A. From October of 1940 to April of 1941.

Q. Did you prepare the document which I handed to you and which has been marked for identification as Exhibit 102?

A. Yes. • • •

Q. (By Mr. Cooper) From what records did you prepare Exhibit 102?

A. I prepared that from the time cards of the men who were doing this work.

Q. And would you explain to the Court the method by which that was prepared, indicating the headings of the various columns and explaining what is shown in each column?

A. In this particular case we took one day from each card of the time in question, and this is the day (indicating), it happens to be the top line of the card, which we took for convenience, and the first column shows the time that the boiler-fireman rang his card, and the second column shows the time his shift started; the third column shows the time his shift ended, and the fourth column indicates the time that he rang out. The fifth column is the time that the succeeding fireman rang in; the sixth column the time his shift began; the seventh column the time his shift ended; the eighth column the time he rang out. The ninth column shows the time that the next fireman rang in, and the 10th column the time his shift began, and the 11th column the time his shift ended, and the 12th column the time that he rang out, and the last column the day.

Q. And in column 2, under the heading "Shift began," the first figure to appear is "7"; is that 7 A. M. or 7 P. M.?

A. 7 A. M.

The Master: Write that in so there will be no question about it.

(The witness then writes in with pen "A. M." or "P. M.")

Q. (By Mr. Cooper) And what, if anything, appears upon an examination of, for example, the figures appear-

ing in the 4th column headed "Punch out" after 3 P. M., and the figures appearing in the 5th column headed "Punch in" before 3 P. M.?

A. Well, that indicates or shows—the figures opposite show that there were 2 boiler firemen in the plant at the same time.

Q. And on what basis, if there was any basis, were the various dates appearing here between October 23, 1940, and April, 1941, selected?

A. They were the top lines of the cards, and it was a convenient line to take in making up the table.

Q. There would be then one entry from each pay?

A. One entry from each pay.

Mr. Cooper: I offer in evidence, if the Court please, Exhibit 102.

Mr. Lamb: How many boiler-firemen are there, three?

A. Well, it requires four men to handle it, because it is 7 days. • • •

The Master: Any further questions?

Mr. Lamb: No, just an objection.

The Master: Admitted. We will take a recess at this time.

(Recess.)

Q. (By Mr. Cooper) Did you have occasion, Mr. Doll, to make a study of the records of the Mt. Clemens Pottery Company to determine the total amount paid by Dorothy May for supplies purchased by her from the company during the period from October 25, 1938, through April 22, 1941?

A. Yes, I went through her records and noted the amounts that she purchased, of supplies.

Q. What records do you refer to?

A. The pay sheets, work sheets.

Q. And does Exhibit 78 reflect the results of that study which you made?

A. Yes, this Exhibit 78 shows the total deductions for supplies purchased by Dorothy May for the period specified.

Q. Have you checked the figures there against the figures appearing in the original books?

A. Yes.

Q. And approximately can you give the Court a general idea how many different pages or different entries had to be examined to determine the information appearing there?

A. There were 68.

Q. Did you at the same time make a check to ascertain the total amount of earnings of Dorothy May during the same period as covered on that Exhibit 78?

A. Yes.

Q. And can you state what the records show as to the total compensation received by Dorothy May from the Mt. Clemens Pottery Company during the period reflected on Exhibit 78? • • •

A. Her earnings during the period covered by the dates on Exhibit 78 were $2675.48.

Mr. Lamb: What dates are those? What period?

The Master: October 25, 1938, to April 22, 1941.

Q. (By Mr. Cooper) And what was the total amount paid by her for supplies during that period?

A. $6.34. • • •

The Master: Well, I don't think it matters. There has been an objection, and I will leave it off.

Mr. Cooper: I offer in evidence Exhibit 78.

The Master: Any objection?

(No response.)

The Master: It is admitted. • • •

Q. (By Mr. Cooper) Do you know, Mr. Doll, from your observation, whether or not on the annual earnings cards such as have been introduced in evidence here, there appear items showing payment of a certain sum of money to an individual on a certain date, but not showing opposite that sum of money any figure in the column headed "Total hours worked"? • • •

A. That figure, sum of money, represents amounts paid to employees for which there was no work performed.

The Master: What do you call that in the plant where there is some money paid in the summer time to the employees, and some money paid around Christmas time?

A. Yes.

The Master: How do you refer to those payments?

A. As extra compensation.

The Master: Is that the way they are referred to in the plant when you are discussing it with the employees, or publishing notices, or do you refer to the summer payments as vacation money?

A. The employees, perhaps, consider it as vacation money. It was given to them at the time of their vacations.

The Master: What about the Christmas money? How was that considered? Or, you must have had some common term you applied to it around the plant as to what they were getting, or did you just say to the employees that, "We are giving you this much extra compensation," without anything more?

A. At the end of the year it was referred to in that manner, yes, as extra compensation.

Q. (By Mr. Cooper) Do you know whether or not there was any agreement on the part of the company to make such payments?

A. There was no agreement that they would be paid, that they would always be paid. The only—at the end of the year it would be announced that it would be paid, and on each occasion it would be announced that they were going to be paid.

Q. Now, have you examined the records of the company with reference to the plaintiffs who have testified in the proceeding here, and determined by the process of addition, the total amounts of such extra compensation, for which no work was done, paid to each of the six or seven individuals who testified here?

Mr. Lamb: Objection. There is certainly an objection to that part of the question which says, "For which no work was done."

Mr. Cooper: That is the uncontradicted testimony

The Master: Re-phrase your question just to refer to his testimony that he has already given. • • •

Q. (By Mr. Cooper) Let me ask you, Mr. Doll, whether or not you examined the records of the Mt. Clemens Pottery Company reflecting payments made to the several individuals who testified here as witnesses for the plaintiffs—

The Master: Which you have designated extra compensation.

Q. (Continuing) —which you have designated extra compensation?

A. Yes. From their earnings cards, I have examined their earnings cards.

Q. And what did you find was the amount of payments made to Steve Anderson during the years 1938 and 1939 in the category which you have described as extra compensation?

A. You want 1940, also, don't you? You said 1938 and 1939.

Q. What years were included in your addition?

A. 1939 and 1940.

Q. 1938 and 1940?

A. Yes.

Q. Do you know, whether or not any such payments were made during the period from January through April of 1941?

A. No.

Q. Then the totals that you prepared cover the years 1939 and 1940?

A. They cover all the period of the suit.

Q. And would you state that total for Steve Anderson? • • •

A. $185.15.

Q. (By Mr. Cooper) And to shorten it, can you go through naming the several plaintiffs and the total amount paid each as extra compensation?

Mr. Lamb: Do I have it clear, is this for the year 1939 or '40 or from October 28, 1938; does this include 1938?

Mr. Cooper: I think he testified it included the period from October, 1938 to April, 1941.

The Master: Let's get it clear; does that include any payment paid during that time?

A. Yes.

The Master: No others?

A. No, sir. Earl Trombley, $91.99. John Metz, $167.31. Earl Larrimer, $153.81. Lillian Socia, $73.87. Eva Freddle, $62.13. Nicholas Dacko, $15.80.

Q. Have you made an examination of the time clock records of the company, Mr. Doll, to determine whether or not among the parties who are named in the designations in this cause, there are individuals who since November, 1941, have remained in the employ of the company? • • •

Mr. Lamb: Objection as immaterial.

The Master: I will take his answer.

A. Yes, I have.

Q. (By Mr. Cooper) Can you identify what has been marked for identification as Exhibit 96, 96-A through 96-SSSS, • • •

A. These are the cards of the individuals that are designated on the complaint who have been or are in our employ since November, 1941.

Mr. Cooper: Cross examine.

Mr. Lamb: As I understand it, you did not offer that list?

Mr. Cooper: No. • • •

Mr. Lamb: No cross examination. • • •

MACON CHARLES TRABUE, was thereupon called as a witness on behalf of the Defendants, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Cooper:

Q. What is your address, Mr. Trabue?
A. 47 Moross Avenue, Mt. Clemens, Michigan.
Q. And are you a ceramic engineer?
A. Yes, I am.
Q. Where were you trained?
A. At Ohio State University, Columbus, Ohio.
Q. With what company are you connected?
A. Mt. Clemens Pottery Company.
Q. How long have you been connected with that company?
A. Since 1929.
Q. What was your work when you were first hired out there?
A. I started in the laboratory as research and testing engineer.
Q. Were you connected with the company during the period from October, 1938, until April, 1941?
A. Yes, I was.
Q. What was your position with the company during that period?
A. That is 1938 to 1941?
Q. Yes, sir.
A. Foreman of the decorating department.
Mr. Cooper: For the record, all of my questions now, unless the contrary is indicated, will be directed to the period prior to the filing of this suit in April, 1941.
Q. During this period covered by this suit, Mr. Trabue, was there any regular starting time in the decorating department?

A. Yes, there was.

Q. What was that?

A. The starting time was 7:15 in the morning, with the exception of a couple of times when employees requested to start at an earlier time so they would get through earlier in the afternoon, which was granted, and at the end of the summer we went back to the 7:15 starting time.

Q. You say in the summer there might be a variation?

A. That is right. When the days were longer and they wanted a longer evening.

Q. Now, during this period when you were foreman of the decorating department, what time would you usually arrive at the plant in the morning?

A. I would usually get there between 6:30 and a quarter to 7:00.

Q. And what would you do after you got there?

A. Well, the first thing I would do in the department would be to get the materials ready that the employees would be using, such as the gold, and the varnish, and see that the department was in order, and then I would go to my desk and start on the record work that I was keeping at the time.

Q. About how long did it take you on the average to get those materials, such as gold and varnish?

A. Well, if I was in a hurry it would be a few seconds.

Q. And then ordinarily by 7 o'clock where would you ordinarily be?

A. I would be at the desk in the department.

Q. Where would you ordinarily be during the period from 7 to a quarter after?

A. I would be at the desk during that period. Usually at the desk.

Q. Whereabouts in the department is the desk located? I suggest that I show the witness Exhibit 30-A. (Handing exhibit to the witness). Can you point out, Mr. Trabue, on Exhibit 30-A, which has been identified as a plat of the company, approximately where within this area marked decorating department your desk would be located?

A. The decorating kilns—are they listed here? I believe this is them, isn't it (indicating)?

The Master: I think so.

A. I think these are the two decal machines, right in here next to the decal machine.

The Master: Get it for the record. Identify it.

Q. (By Mr. Cooper) For the record, it would be almost immediately under the two rectangular marks which appear on the plat immediately to the left of or in front of the letter D in the word "decorating," is that right?

A. Well, it would be quite a ways from that. It would be right in back of the—I would say the west mangle, the west decorating mangle.

The Master: What did you call these, decorating mangles?

A. Yes, that is right.

The Master: These rectangular objects just to the left of the word "decorating" on the map, then, are the mangles?

A. That is right.

The Master: And you say it is just to the—

A. (Interrupting) Just in back of this one.

The Master: In back of the left mangle, and by in back of it, you mean it is directly below it on the map?

A. That is right.

Q. And where, with reference to the position of your desk, would the various girls employed in the decorating department be when they were working at their benches?

A. Well, they would be both to the east and west of the desk, the full length of the department.

Q. And where would you ordinarily be sitting during this period from 7 to 7:15?

A. At that desk.

Q. Now, on the basis of your observations, Mr. Trabue, can you state with reference to the usual starting time in the decorating department when the girls there employed would begin to come into the department?

Mr. Lamb: Objection.

The Master: Overruled. Go ahead.

Mr. Cooper: You may answer.

A. Oh, I would say that they would start coming in perhaps 10 minutes before starting time.

Q. And again on the basis of your observation when with reference to the starting time would the whole department usually be there?

Mr. Lamb: Objection.

The Master: Overruled. You may answer.

A. The whole department, I would say, would be—the average would be there at the starting time, although there would be some of them would be still going to their bench at the starting time.

Q. (By Mr. Cooper) Mr. Trabue, can you state on the basis of your observations when, with reference to the regular starting time, production work would start?

Mr. Lamb: Objection.

Q. In the decorating department.

Mr. Lamb: Objection.

The Master: He may answer.

A. Why, production work would start, on the average, at the starting time.

Q. What was your observation if any, as to when, with reference to the regular starting time all of the girls would be at work?

Mr. Lamb: Objection.

The Master: Overruled.

A. Some of the girls would be coming in the department after the starting time.

The Master: You mean as a regular matter every day?

A. Yes, there would be some of them straggling in every day.

Q. What announcement, if any at all, was made as to the arrival at the starting time?

A. Well, all that I ever made to any of them was that they were required to be there at the starting time.

Q. Was any announcement made as to when 7:15 would come; a whistle would blow or anything else?

A. No, there was no whistle blown. At 7:15 I would get up from my desk and make the rounds of the depart-

ments, see that the people were at their particular working place, and those that were not, tell them that it was starting time and to go to work.

The Master: How did the ones that you didn't tell, know when the starting time had arrived?

A. They would see me going around through the department, and a good many of the girls had clocks around in the department that they would set by my clock at the desk.

The Master: Were there any company clocks overhead that could be seen around the department?

A. Not in the department.

Q. (By Mr. Cooper) Now, what is the nature of the operations performed in this decorating department, Mr. Trabue?

A. Well, the operations in the decorating department are decorating dishes. Do you want me to go into a discussion of the operations?

Q. Briefly, I wish you would outline the nature of the jobs. There were two chief jobs, to get this started, were there not; the decal girls and the liners?

A. Yes. They were both in the same department. The Decal girls would take the undecorated piece of ware; they would apply a varnish coat; allow this varnish coat to dry; and then they would apply the decal spray, and they would rub this spray into the varnish coat; and then they would dip this piece of ware in water to remove the paper, the back of the paper on the decal spray, and then they would take the piece of ware and put it on a rack to dry. It was allowed to dry overnight, and the next day the liners would go to this particular rack, take the piece of ware from the rack, apply their gold to the edges, stilt up the piece of ware and put it in kiln boxes.

Q. Can you on the basis of your own observations, describe the activities of the girls in the decorating department between the time they would arrive in the department in the morning, and the regular starting time?

Mr. Lamb: Objection, unless he identifies the girl and the date that he is referring to.

The Master: Read that question back.

(Question read.) • • •

The Master: Overruled.

A. Well, there was no order to their activity. As girls will be, they spent a good bit of time congregating and talking. They spent time preparing themselves for work.

Mr. Lamb: I submit this is entirely wrong. • • •

A. Some of them would go to their benches, while others would congregate. Then when I went around at 7:15, they did go to their benches, and at that time everybody went to work.

Q. (By Mr. Cooper) Now, what materials or supplies, if any, were required by girls doing decal work?

A. Materials would be the varnish that they used and the decal sprays that they used.

Q. Where would a girl get the varnish?

A. The varnish was returned every night—their location would be in between these two decal spraying machines—and every morning they would go there and fill their particular container with this varnish.

Q. Can you say whether or not the decal sprays that you spoke of were something like this paper which has been marked as Exhibit No. 61?

A. Yes, those are sprays of one pattern.

Q. And where did the girls keep the sprays?

A. They kept the sprays with their work at their bench one day in advance. Tomorrow's work, they would keep there tonight.

Q. Well, then, what, if anything would a girl doing decal work have to do after arriving in the department before she could begin production?

A. Well, before she could actually begin production, she would have to put her apron on, if she wore one—and most of them did. I believe—and she would have to go and fill her container with varnish, she would have to take ware to her bench, take her varnish brush and clean it out, and then she would be ready to start work.

Q. What has been your observation as to whether or not there was any uniform practice with reference to the place where the girls' ware would be?

Mr. Lamb: Objection.

The Master: Overruled. You may answer.

A. The ware that they might be doing would be—it would be various places in the department. We tried to work the girls as close to the source as we could. It would be necessary for her to go to the various places in the department to get this ware.

Q. Would there be any uniformity in the situation as to whether or not in the morning a girl would have to go and get ware or would the question as to whether or not a girl had to go and get ware vary between different girls and different days?

A. You say the position that they—

The Master: Would the girls have to go and get ware in the morning before starting work?

A. Yes, the majority of them would. Occasionally, if they were on the same item two days together, they might have some left from the day before. As a rule they had to get it in the morning unless they had some left.

Q. (By Mr. Cooper) Now, what is your observation, Mr. Trabue, as to the time it actually took the girl to get her varnish and get her ware and get to work?

Mr. Lamb: Objection, unless the date is specified.

The Master: Overruled.

A. Why, a girl could do this, like I mentioned—I could get any material I could to do it in a matter of a few seconds, if they saw fit to do so.

The Master: How long do you figure? Did you ever observe the girls passing from the time clocks to the decorating department or were you always in the decorating department?

A. Well, I can't recall any specific instance, but I have been past the clock. I don't know just when, and they haven't been coming in yet.

The Master: How long do you estimate that it took them to come from the time clocks after punching in, to come to the place where they were working in the department?

A. Oh, I would estimate it, a matter of a few seconds or minutes. Perhaps two or three minutes.

Q. (By Mr. Cooper) Now, Mr. Trabue, were there any preparatory operations which the liners were required to do before they could begin actual work?

A. Yes, the liners' material, which was liquid gold, was returned every night. It would be necessary for them to pick that up at my desk every morning. And at their bench it was necessary for them to get their lining brushes in working order. By that I mean they kept their brushes in a bottle at night, with a small amount of turpentine to keep the brush soft. In the morning they would have to work the brush to soften it up, and to get the bristles working all right. After they poured their gold in their bowl, it would be necessary to work it to get the proper working mixture.

Q. How long as to your observation as to the length of time required to do that?

A. A person who kept their equipment in good order could do that in a few seconds, too, I believe.

The Master: What do you mean by a few seconds? Give your best estimate.

A. I would say on the way past the desk, they picked up their gold and their brushes, they could do it all in a minute.

The Master: In a minute?

A. Yes, I would say so.

Q. (By Mr. Cooper) And what else—

The Master: Were they supposed to do that before 7:15 rolled around?

A. No, they just had to be at their bench doing that.

The Master: Do you know whether they did do it in the department before 7:15 came, in most instances?

A. In most instances, no. I have seen some of them get their brush ready before, yes.

The Master: Go ahead.

Q. (By Mr. Cooper) Then after work got started, Mr. Trabue, what is your observation as to how steadily the girls kept working during the morning?

A. Well, we had a great number of girls in the department. They were working quite close. I never tried to

control that beyond a certain degree, because of the fact that it was necessary, as I said, to go various places in the department for ware, and unless there was an unusual amount of it, there was no objection to them stopping and and talking.

Mr. Lamb: What was that material they picked up on the desk, gold something?

A. Liquid gold.

Mr. Lamb: Liquid gold?

A That is right.

The Master: Was that used in making a gold ring around the plates?

A. That is right. They paint them on and then it burns gold.

Q. (By Mr. Cooper) On the basis of your observation again, Mr. Trabue, can you state when with reference to the quitting time production operations would cease?

Mr. Lamb: Objection.

The Master: Overruled.

A. Well, production operations would cease at quitting time. Some of the decal girls, where it was necessary to cut print, would perhaps finish up a little before quitting time. They tried to govern their work so they got through at quitting time.

Q. (By Mr. Cooper) What was your observation, if any, as to girls working after the regular quitting time?

A. Most of them would be through at quitting time, some before. I have seen a good many of them in the department waiting for quitting time, and I have seen them waiting at the clock to go through, pass the clock to punch out.

The Master: Were there some that continued after quitting time?

A. There again I would say the same as I said on starting. I have seen them perhaps finish up a piece of ware, or putting their brushes away after quitting time, yes.

Q. (By Mr. Cooper) Did you attend foremen's meetings, Mr. Trabue?

A. Yes, I did.

Q. How frequently were they held?

A. Every Tuesday noon.

Q. Who would attend?

A. All foremen attended the meetings.

Q. Would Mr. Charles E. Doll, Senior, be there?

A. Yes, he would be in charge of the meeting.

Q. Would there be any discussion at those meetings as to the wage and hour law?

A. Yes, there have been many discussions on that.

Q. Did you ever hear Mr. Doll say anything about the wage and hour law at those foremen's meetings?

A. Yes.

Q. And what did you hear him say?

A. Well, he instructed us that our employees were not to work more than 40 hours in any one week, and that the minimum rate paid an employee was explained to us.

Q. How long was that 40-hour week followed?

A. Well, it was followed immediately after the law became effective, and has been followed ever since.

Q. Was the decorating department formerly on a longer week or was it always on a 40-hour week?

A. No, we were on a 44-hour one at one time, and according to the law, we were cut to the 42, and then to the 40.

Q. Are you familiar, Mr. Trabue, with the method under which the company computes the number of hours of work as recorded on the right-hand side of these time clock cards?

A. Yes, I am.

Q. Can you state on the basis of your observation of the girls in the decorating department, how that computation of hours worked compares with the hours actually worked by the girls?

Mr. Lamb: Objection.

The Master: He may answer.

A. Well, my other statements about girls going to various places in the department, and about the visiting that I did allow to go on, I would say that the actual

hours computed—that the girls actually works less than the actual hours computed by the company.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled.

Q. (By Mr. Cooper) Did you ever give any instructions to the girls in the decorating department as to when they should punch in at the time clock in the morning?

A. I gave them instructions that they should be in the department at starting time, and I have also told them that they could not come past the time clock until 14 minutes before that starting time.

Q. Was any other mention of 14 minutes before starting time made in any instructions that you might have given these girls?

A. Not that I made, except that they couldn't come past the clock until that time.

The Master: Did you tell them they should punch in the clock by 7:15, or did you tell them that they should be at the department at their place of work by 7:15?

A. I told them they should be in the department ready and at their bench at 7:15; in the department at their bench. • • •

Q. (By Mr. Cooper) Can you advise the Court, Mr. Trabue, as to whether or not you had any regular practice as to making a statement to new employees as they were hired, with reference to the basis of their compensation.

Mr. Lamb: Objection. I think—

The Master: Did you have any regular practice? I will find out whether he had one, and then pass on it. Just yes or no.

A. Yes, I did have.

Mr. Cooper: Now, if the Court please, I think that if Mr. Trabue testifies that the new girl was hired, and went to work, that it was his regular practice, as he has said, to explain to her the basis on which she was being hired, he certainly is competent to testify as to what his practice was.

The Master: I think so. If there is something that is repeated over and over again over the two-year period, he won't have to designate each time that he talked with the girl, and the date, and the name of the girl.

Mr. Lamb: Objection.

The Master: You may answer.

A. Will you read that question again, please?

The Master: The question is now as to what your regular practice was with reference to instructing the girls?

A. As a new girl was brought into the department, she was brought to the desk, and I sat down with her and talked her work day over, and the amount of compensation she was getting; I would tell her she would start in the morning at 7:15, and her earnings—I told her she would be paid by the hour up until such a time that she would earn more than her regular piece rate. It was explained to her she was paid the same piece rate as other employees in the department. During this apprenticeship period where she could learn to do this work she could earn more than that. She was very carefully instructed she would not earn less than 30 cents an hour with a possibility of earning more on piece rate.

Q. Would any question ever come up about the furnishing of supplies and brushes, and other supplies that were used? • • •

A. I will give each one of them a set of equipment, the equipment they would be using, and instruct them that after, or any further equipment or materials needed, why, they would be, or they would have to furnish them themselves.

The Master: Did you always do that?

A. Yes. They were given one complete set of everything that they used. But we didn't furnish them any more than that. • • •

Q. (By Mr. Cooper) Do you know, Mr. Trabue, where the girls in the decorating department bought these materials and supplies?

A. Most of the materials and supplies were bought from the company. However, a good many of them brought materials in from other sources.

Q. Have you ever had occasion to make observation as to what is done in other potteries in connection with the furnishing of materials and supplies?

A. Yes, I know about that. I know what is done.

Q. What is the situation so far as you know it?

A. Well, the situation is very largely the same as it is at ours, at the Mt. Clemens Pottery, and the employees furnish their own. • • •

The Master: Did you work in any of those other potteries?

A. No. It was through my being a ceramic engineer, and I knew the men that do work in those potteries. Occasionally we get together and discuss our problems.

The Master: Do you know what you were told by those engineers—well, that's what you know, what you were told by the engineers of other potteries?

A. That's right. I have had occasion to investigate, perhaps in the last year, all materials.

Mr. Lamb: I certainly think it is not proper.

The Master: I think it is hearsay. I will strike that testimony. • • •

Q. (By Mr. Cooper) Was there some practice or other, Mr. Trabue, of the decalcomania girls cutting up their sheets of decalcomania?

A. Yes, they all cut their own.

Q. Now, I wonder if you could just describe to the Court, using if you wish, to illustrate, this document which has been marked as Exhibit 61, and would you just describe to the Court what the regular practice was to when this operation was performed and what the purpose of it was and all about it?

A. This cutting operation was performed to fit the decalcomania spray to the piece of ware. The majority of the cutting was done after they had finished printing their ware, in the afternoon, before quitting time. However, at

various times during the day they would be cutting print at their bench.

Q. Could you insert there, Mr. Trabue, what form the decalcomania sheets would be when they were handed to the girls?

A. This is the form they would be in when they were handed to the girls (indicating).

Q. Would they be in wide or narrow form?

A. Well, it depended on the particular layout of the sheet.

Q. That is, it wouldn't be the big sheet such as the one which was introduced here, is that right?

A. No, that is the form that we get them, and they are given to the girls prepared and cut up.

Q. You are referring now to the document marked Exhibit 60?

A. That was not given to the girls like that. It was prepared for them. They only got print for one item. Those sheets were pinned up in thickness of 16 so they could cut 16 sprays at the same time.

Q. I don't know whether this is clear. Would the strip as the girls got it be in the form as is indicated by what exists in the lower left-hand corner of Exhibit 61, a strip with one piece of decoration on it?

A. Only one item of decoration on it, yes. It would always be in strips.

Q. I see.

A. It might be a double strip.

Q. And what would determine how many sheets a girl would take and cut out?

A. A girl would turn in an order of how many dozen dishes she would do the next day. We would supply her with enough print to do those dishes. She estimated how many she would do and we supplied her with enough print to do those.

Q. And when with reference to the quitting time would that job of cutting up the decal work be done?

A. The majority of it was done shortly before and up

until quitting time. However, some of it was cut during the day, as I mentioned.

Q. How were the decal girls paid for that work?

A. Well, the new employees or employees on a minimum, it would be included in their hours in which they were paid this minimum, and employees on a piecework, this cutting was figured in in the piece rate price.

Q. Could you explain to the court the nature of the operation which has been referred to here as centering?

A. Centering is putting the round spray in the center of a piece of ware.

Q. What would be the occasion that would necessitate that?

A. This spray was put in as part of the decoration.

Q. And would occasion ever arise of re-centering a piece?

A. Yes, we did have.

Q. What was that situation?

A. Re-centering came where a piece of ware, having already been decorated, either the spray was not in the center of the piece of ware or the workmanship was not such that the piece of ware came out right, and the center had to be removed and a new center put in.

Q. Who would do the re-centering?

A. We had the center cleaned out with an acid, then we returned these pieces of ware to decal girls to re-center.

Q. What is your observation, if any, as to how many pieces a girl would get to re-cent in the course of a week?

Mr. Lamb: Objection.

The Master: Overruled.

A. A girl wouldn't average over six pieces of ware a week, if that many.

Q. Have you had occasion to observe how long is required to put center decoration on that piece of ware?

A. These center decorations were put on along with their regular work, and six pieces wouldn't take over a minute at the most.

Q. Do you happen to have any particular recollection of an employee in that department named Dorothy May?

A. Yes, I know Dorothy May.

Q. Do you have any particular recollection in your mind as to her usual practice in coming into the department with reference to the regular starting time?

A. Dorothy May was not prompt in coming in. She was, I would say, in most cases either just gotten in the department or was on her way to her bench at starting time.

Q. Is anything at all outstanding in your recollection as to her usual practices during the day? • • •

A. Well, as I stated, Dorothy May was never prompt in coming in in the morning. She was the same way about her work. She did neat work, did good work, but she was apparently never interested in how much money she was making. She spent a good bit of time aside from doing her actual work in her department.

The Master: In what respect? What would she do?

A. She would be visiting or just—well, I would say visiting or just sitting there. Her husband would come through. He worked in another end of the shop. He would stop by. His noon hour was a different time, and he would stop in in the afternoon to talk with her. He would speak—if I would see him he would speak to me, and we would converse a bit, and he would go down and talk to Dorothy.

The Master: Were these girls paid on an individual piece rate basis in your department?

A. That is right.

The Master: Not a group piece rate basis?

A. That is right.

Q. (By Mr. Cooper) Do you know, Mr. Trabue, whether or not the company has always used the same method of computing hours worked since time clocks were installed?

A. Ever since I have been there they have, yes.

Mr. Lamb: You came there in 1929?

A. That is right.

Q. (By Mr. Cooper) Do you have any recollection as to when time clocks were installed and put into general use?

A. The time clock has been there ever since I have been there, I believe.

Q. You never punched—did you ever punch a time clock yourself?

A. No, I didn't.

Q. Now, have you ever heard any objection from any of the employees in the decorating department as to the correctness of the system that the company used in computing hours worked?

Mr. Lamb: Objection.

The Master: I will take the testimony. • • •

A. Nobody in that department ever complained to me about the computation.

Q. (By Mr. Cooper) Did any employees in the department ever complain to you about anything else?

Mr. Lamb: Objection. Are we interested in all the complaints the employees might have?

Mr. Nunneley: You had some people go on the stand here saying he didn't dare say anything to the foreman or he would be fired. You recall that, Mr. Lamb, and the Master recalls it. There was a build-up here to prejudice the Court. That was a stock question and stock answer.

• • •

The Master: I think it is relevant on that question, because there was that testimony. • • •

A. Why, I kept in very close touch with employees in the department, and they felt free to come to me with anything that was bothering them.

As far as their earnings was concerned, they turned in their own slips showing the amount of work they did. I totalled it for the pay. They checked my total, and their pay went to the office, and on payday, if there had been any error through my checking their rechecking, they came to me and we had it taken care of so that their pay was figured according to the way they had figured it and checked it.

The Master: How frequently were complaints registered in that manner as to the checking of pay?

A. The only one that I can recall would be an error on my part in transferring it from their sheet to the office.

The Master: How often would that happen? During the course of a year, how many times would it happen?

A. Well, we would go pays where it wouldn't happen in any degree, we wouldn't have any of it happen, and then maybe I made two mistakes on one pay. I wouldn't say that I didn't make very many, but since I checked it and they re-checked it, and I re-entering it well, I would say I didn't make over 12 mistakes in a year. It very rarely occurred, and it bothered me when it did, and we had it corrected.

Q. (By Mr. Cooper) Did you ever fire an employee for coming to you with a complaint about such a matter?

Mr. Lamb: Objection. There has been no testimony as to him having the right to hire and fire.

The Master: All right. I think you had better first see whether he had the right to hire and fire.

Q. (By Mr. Cooper) What is the situation with regard to that, Mr. Trabue?

A. When I was foreman of the decorating department, I had the right to discharge employees from my department.

The Master: Did you ever do it for them? There was an objection, but I overrule it. I think it is pertinent to the issues that have been raised.

A. Absolutely not.

The Master: It would be very pertinent as to whether this individual did or not. He can testify if he did but he wouldn't be able to testify for Mr. Doll. Mr. Doll has already testified.

Q. (By Mr. Cooper) Do you know of anybody in your department ever being fired for that reason by somebody else?

Mr. Lamb: Objection.

The Master: Overruled.

A. I stated I had been in the department since 1935

and I had charge of that department since that up until last year, and there was nobody fired during that time, during all that time, for anything like that, and I hadn't heard of it before my time.

Mr. Lamb: I move that the answer be stricken. The materiality of the firing is not at issue here, and the reasons described for the firing, why, it is not material in this hearing, and that matter has been threshed out before the National Labor Relations Board.

The Master: I understand him to say that nobody was fired in your department or fired for any reason in your department.

A. No.

The Master: Or for that reason?

A. For that reason.

The Master: Well, I think it is material to the issues that have been raised. I don't think it would be material if that point hadn't been made on the other side of the case, that is, they couldn't raise it for the first time here.

Q. (By Mr. Cooper) To clear the record, as I understand it, when I inquired as to that reason, that reference is to the situation of an employee coming to the management with a complaint; isn't that right?

A. Yes.

The Master: Well, the only complaint he has talked about has been about the method of computation of pay. I haven't heard of anything else.

A. Might I add to that same answer that the employees of the decorating department always understood if I didn't handle—

Mr. Lamb: Objection.

The Master: No, you can't testify as to that.

Mr. Lamb: Not as to what they understood.

The Master: No, not as to what they understood. Did they make any complaint?

A. The employees had the right, as I told them, and as I instructed them, to take any matter up beyond me if they cared to, and I know of none being taken up.

Mr. Cooper: Cross-examine.

Cross Examination

By Mr. Lamb:

Q. Don't you know of any complaints being taken up with Mr. Doll, Sr.?

A. From the decorating department?

Q. Yes.

A. No complaints that I know of, no, that I have taken care of. • • •

The Master: You say none were brought above you to Mr. Doll?

A. None that I know of.

The Master: All right, go ahead, Mr. Lamb.

Q. (By Mr. Lamb) Now, as I understand it, you say that the employees punched their time clock, went into this decorating department, and it took the two or three minutes to get to the work bench?

A. From the time clock to their bench, yes. I did say that.

Q. On the way to the time clock they passed this desk of yours which you referred to?

A. No, they didn't. In the ordinary way in, they did not. They had to come around to my desk. • • •

Q. (By Mr. Lamb) Then they, after punching the time clock, went in not to their bench by way of your desk, but to your desk by way of their bench, is that correct?

A. The decal girls did not come to my desk in the morning. The liners did.

Q. I see. Well, the liners, then, did they go to their benches first and then go over and get this liquid gold from your desk?

A. No, they came by my desk on the way to their bench.

Q. So we have it straight, they went from the time clock, to your desk, to their benches?

A. The liners.

Q. The liners did?

A. That is right.

Q. And when they went past your desk, usually they picked up the liquid gold?

A. That is right.

Q. What is liquid gold, a material that is put on the decal, or what?

A. No, liquid gold is a metallic gold fluid and oil, and it is painted on as an edge decoration.

Q. Painted on the ware?

A. That is right, painted on as a liquid.

Q. What sort of a unit did they pick up?

A. A bottle.

Q. A bottle?

A. Yes.

Q. Possibly a pint bottle?

A. No, a hundred-gram bottle about half-full.

Q. So the liners would pick up a bottle apiece, is that right?

A. That is right.

Q. And then go to their bench, is that right?

A. That is right.

Q. Was there anything else that any of the employees had to pick up at your desk?

A. That is all that they would pick up at my desk.

Q. I assume it is your testimony that the girls and other employees in your department visited the cloakroom before they punched the time clock?

A. You mean on the way out at night?

Q. No, on their way in in the morning.

A. Visited the cloakroom before they punched the time clock?

Q. Yes.

A. No, we had a restroom in the decorating department itself, and I don't know what they did before they got to the time clock, but a good many of them went to the restroom on coming into the department.

The Master: Put their coats and hats there?

A. No, their coats were left before they punched the time clock.

Q. (By Mr. Lamb) Their coats were left where before they punched the time clock?

A. In the front of the plant before they got to the time clock.

Q. That is what I refer to as the cloakroom.

A. That is right, they left their coats outside of the department.

Q. Did they have a locker?

A. Why, they have access to a locker, yes.

Q. But, anyway, they left their coats and hats in the cloakroom and proceeded to the time clock?

A. In mild weather they wore light jackets in the department.

Q. Then after they parked their stuff in the cloakroom, they proceeded to the time clock and punched the time clock, is that right.

A. As far as I know, yes. As I say, I have been in the department most times. There is congregating in the halls, at the cloakroom, there is congregating perhaps at the time clock. A group of girls getting together, they do have things to talk about.

Q. Then they punch their time clock and it takes 2 or 3 minutes to get to their bench, is that right?

A. If they went immediately to their—usually they didn't. Usually they would have things to talk about.

Q. You say there was no whistle?

A. Not at 7:15.

Q. At that starting time. You also say there is no clock in your department?

A. Numerous clocks. I had one at the desk.

Q. Any company clocks?

A. I don't believe any that the company bought. The one at the desk I bought myself.

Q. Is there a company clock on the wall or on a post?

A. There is one on the time clock.

The Master: In the department, is there?

A. In the department, no.

Q. (By Mr. Lamb) You said you would go around

at 7:15, and if you didn't see any of the girls working, you would tell them to get started, is that right?

A. It was my practice, they understood, for me to go around through the department in the morning, and if they were not working as I went around at 7:15, I would just go to them and tell them it was 7:15.

Q. Then they would get started?

A. They would go to their bench and then it would be a few seconds before they would be in actual production.

Q. Would you say that decal girls would—it would come quitting time and then it would take some time for them to finish up, sometimes some of the girls had to take some time to finish up, is that it?

A. No, if it was necessary for them to take some time to finish up, they were instructed, and it was followed up, that they were permitted to work until the next quarter of an hour, or 15 minutes after, or half an hour, and then to take that much time off the next day.

Q. Did you go around at any particular time to say, "Now, it is quitting time?"

A. Yes, I did.

Q. How many girls in this department?

A. During this period there would be between 130 and 150.

Q. And does that include liners, too?

A. Yes, that is both.

Q. Did these girls work on benches?

A. That is right.

Q. And stretched over—how big a place is your department?

A. Well, it is a large department. It is spread out; it is probably—I probably estimate it to be about 300 feet wide and perhaps 600 feet long at the longest point.

The Master: Just a minute. How far back does that go on the map here?

A. It goes from the chipping department here back to here.

The Master: You are showing from your statement, chipping here—

A. (Interrupting) To the end of the building.

The Master: To the end of the building on the right, the east end of the plant?

A. I don't know whether that distance is marked or not.

The Master: All right, go ahead.

Q. (By Mr. Lamb) As I understood your testimony, Mr. Trabue, you said that you have seen some of the girls finishing their work, or cleaning up, and so forth, after quitting time; is that correct?

A. Yes. And they have been instructed to come in later, either come in later or go out earlier the next day.

Q. So, would you tell the girls the night before, for instance, what time they should come in the next day?

A. Our regular starting time was 7:15, unless in these instances where they worked over, then I would tell them, yes.

Q. If a girl worked a little longer one day you would then tell her she shouldn't come in at 7:15, for instance, the next morning, or 8:00?

A. No, we would start in at 7:15 and tell them they would be through that much earlier the next day.

Q. So, if a girl worked a little longer one day, you mean she worked a little less time or she would be through earlier the next day, is that right?

A. That is right.

Q. And that was your infallible rule, was it?

A. Yes.

Q. Make these girls work less time the following day?

A. That is right.

Q. So if the time clock, for instance, shows a girl worked until 4:35 this afternoon—

Mr. Cooper (Interposing) Objection right there.

Q. (Continuing) —the time clock—

Mr. Cooper: Objection.

The Master: Wait a minute until he completes his question.

Q. (Continuing) —the time clock of the following day would show she only worked until 4:00; is that correct?

Mr. Nunneley: Just a minute. We object to that as a misleading question. The witness didn't say anything about the time clock. He said he observed them working after that time, certain things are done, he didn't say anything about the time clock showed that. • • •

The Master: I will take the witness' answer.

Mr. Nunneley: You can ask him about the time clock, but he didn't testify the way you stated.

The Master: The witness can state whether or not that is his testimony.

A. I testified if they were working after that time. I didn't testify that the time clock showed that, because it was the same thing at night, practically all of them went to the restroom after they completed their work before they went to the time clock.

Q. (By Mr. Lamb) Well, do I get your testimony straight, you say if a girl worked longer?

A. Yes.

Q. On one afternoon, that you would then instruct her to work a shorter time the next afternoon?

A. If she was at her bench working, yes, after quitting time.

Q. So, isn't it true, then, Mr. Trabue, that the time cards of the girls to whom you have referred as having worked a little longer one afternoon will show less time on the following afternoon? Is that correct?

A. The ones I had—yes, the ones I permitted, but the ones that had gone to the cloakroom, or whose time card shows time they were not working, it would not show that. There were girls that would congregate at night in groups and would go to the cloakroom, and their time card would show later, but they were not working.

The Master: On that point, a girl going to the cloakroom would still be out within the next 15-minute period, would she not?

A. Yes.

The Master: After she quit production work?

A. She would still be out in the 15-minutes, but it might be a matter of 10 or 12 minutes.

Q. (By Mr. Lamb) So, if the time clock showed some time between 4:30 and 4:45 one day, it should show between 4:00 and 4:15 the next day as the time she left?

A. Yes, when we were working full time in the department our quitting time was 4:15.

Mr. Lamb: May I have the time cards of Dorothy May?

Mr. Cooper: Yes.

(Cards handed to Mr. Lamb.)

Q. (By Mr. Lamb) Incidentally, Mr. Trabue, what do you refer to as the quitting time?

A. The decorating department only worked as many hours as we had work for the employees to do, and if we would work full time, our quitting time would be 4:15.

Q. Is that when you were starting at 7 or 7:15?

A. 7:15.

Q. Did you say that you just started it at 7 in the summer months?

A. Just for the period that the employees asked for it, and, as I recall, it would be in the summer months, yes.

Q. I note in Exhibit 62 that there is from November through January, that always the girls were reporting in at 7 or just a minute or two after 7. That means 7:15, is that right?

A. The starting time was 7:15, but they couldn't come past the clock until 14 minutes after, so 7:02 would be 7:15.

Q. They had instructions they couldn't come past the time clock what?

A. They wouldn't be permitted to come past the time clock between 14 minutes to the starting time.

Q. That is between 7 and 7:15?

A. Not between 7 and 7:15, no.

The Master: 7:01 to 7:15?

A. That's right.

Q. (By Mr. Lamb) Now, did you say that the regular quitting time was 4 or 4:15?

A. When we were working our regular hours, it was 4:15, but, as I say, the decorating department over no

period worked regular hours because we worked according to the work that had to be decorated. You will find that in running through those hours, that the hours would be well under 40 hours a week.

Q. Well, the way you compute them, it would be possible to keep them under 40 hours a week, yes.

Mr. Nunneley: Well, they were, anyway.

Mr. Lamb: But, keeping the cards the way you should have kept them, it would be over 40 hours a week.

Q. (By Mr. Lamb) Incidentally, you said that Mr. Doll, speaking at these meetings, said that there would be a 40-hour week?

A. When that law became effective, yes.

Q. Well, that was in 1938, do you recall?

A. I believe it was. In the fall of 1938, I believe. I wouldn't remember.

Mr. Nunneley: The witness also said there was a 44 and a 42-hour period. • • •

Q. You heard him at that time say that they were to put in a 40-hour week?

A. At the time the 40 hours came out, yes, he brought it up to us and discussed it. • • •

The Master: The question is whether Mr. Doll told you in the latter part of 1938, that you were to be on a 40-hour week.

A. As I understood it, yes.

Q. (By Mr. Lamb) You were referring to the fact, or made the statement, rather, that if an employee worked late one afternoon, that the following afternoon she would work less time, is that correct?

A. They would not have to be in succession, no.

Q. It could jump several days, then?

A. That is right. If we were working full time.

Q. So that your statement is now that when you saw an employee work after time one day, you did not tell her she would have to work a shorter time the next afternoon, but that some afternoon thereafter she would have to work a shorter time?

A. No, it was told what afternoon; and, as I say, in most cases we were not working full time. Where we were not, it was the next day.

Q. Did you tell her, for instance, if she worked late on Tuesday, that she could work late the next day, but on the day thereafter, which would be Thursday, she couldn't work so long, is that what you mean to tell me?

A. In the natural course of work, yes. In the case of a holiday or some time we were making up, she would have to work a longer day if there was some time we were making up.

Q. You picked out a day of the week thereafter where she would have to work a lesser time?

A. That is right. In the ordinary part of her work, unless there was a holiday or something where we were working a shorter day, then there were several long days, and one short day.

Q. I can't find any evidence of that rule in your exhibits, the time clock cards?

A. You are talking about liners now. I think if you will go back on my statement it would be decal girls.

Q. Which is Dorothy May?

A. Liner.

Q. Who were some of the decal girls who you refer to?

A. Well, any of them. . . .

Q. (By Mr. Lamb) This Edna Freddle, was she a decal girl?

A. She worked on decal, yes.

Mr. Lamb: Have you got her cards?

Mr. Cooper: I will see.

Q. I hand you the time clock card of Eva Freddle, being Exhibit 58-A, and representing the period for the pay period ending November 29, 1939. I will ask you if I state correctly the time when she checks out. The first Wednesday on the card, 4:21; the following Friday, 4:24; the next day listed, Saturday, 4:22; the next day listed as Monday, 4:16; the next day listed as 4:20; the next day listed, Wednesday, 4:24; the next day, Thursday, 4:21;

and the next day, Friday, 4:33; the next Monday, 4:26; and the next Tuesday, 4:25; is that correct?

A. Tuesday is the first day of the pay?

Q. Yes. Have I read the times marked on Exhibit 58-A correctly, being the time she checked out?

A. Yes, as I follow down there.

The Master: Could I see the next card following that?

(Exhibits handed to the Court.)

The Master: On 58-A, does it appear that on the second Friday she worked beyond 4:30, or, that is, she worked to 4:30 and got out after 4:30?

A. Yes, that is what it appears there.

The Master: You were going to say they should make up for that 15 minutes the next day.

A. If you notice she went out sooner at noon. The normal time is 11:45. She went out at 11:30. The same thing here, she probably got her work finished up and was in no position to finish up another piece, and went out earlier. The decorating department, we just worked according to how much work we had, and there is the case there we did not have enough work to work the full time.

Q. (By Mr. Lamb) I refer you to Exhibit 58-Q for the work period ending March 5, 1940, and I shall ask you whether or not I read correctly the quitting time of Eva Freddle during that period.

Mr. Nunneley: Just a minute. We object to the language of "quitting time," the time shown on the time card.

Q. (By Mr. Lamb) The time indicated on the time card under the words "night out."

A. That is right.

Q. The first day listed thereon, Wednesday, 4:30; the next day, Thursday, 4:24; the next day, Friday, 4:19; the next day, Monday, 4:20; the next day, Tuesday, 4:23; the next day, Wednesday, 4:26; the next day, Thursday, 4:29; the next day, Friday, 4:38; the next day, Monday, 4:27; the next day, Tuesday, 4:15; have I read those times correctly?

A. As I saw them, yes, as they appear on the card.

Mr. Cooper: What was the date of that?

The Master: March 5, 1940.

A. She was over, you notice, in the total a quarter of an hour, undoubtedly.

The Master: That is because of her first day?

A. She apparently took longer in either going to the cloak room or talking. She got out just at 4:30. Down here she got out just at 4:15, and she couldn't be working and get out at that time. She got credit for 4:30 here.

The Master: One is 4:38, but apparently she quit earlier at noon that day?

A. Yes. That is a 4:30 punch, as we call them.

The Master: You mean the clock is punched at 11:42 that day?

A. She stopped work at 11:30.

Mr. Cooper: Would the Court let me interpose one form of question which may clear up a point which hasn't been touched on yet?

I wonder if Mr. Trabue can indicate to the Court what line on the time clock card is the line on which is registered the first day of the decorating girls' first week?

A. We start on Tuesday of the week in the decorating department, the bottom line.

Q: (By Mr. Lamb) I refer you to Exhibit 58-X, being the time card for Eva Freddle for the period ending June 11, 1940, and will ask you if I read correctly the time marked on her time card under the column "night out," and the first being a Wednesday is 4:22?

A. The first is Tuesday.

Q. I am asking on this card, 4:22?

A. Correct.

Q. 4:21?

A. Correct.

Q. 4:20?

A. That is right.

Q. 4:43?

A. That is right.

Q. Next, 4:47?
A. That is right.
Q. Next, 4:45?
A. That is right.
Q. Next, 4:36?
A. That is right.
Q. Next, 4:45?
A. That is right.
Q. Next, 4:29?
A. That is right.
Q. Next, 4:29?
A. That is right.
Q. In the first column there appears nothing marked under the words "morning in" until Wednesday. Right?
A. She didn't put her card all the way in. You notice two punches there on the same day.
Q. So that both Wednesday and Thursday appear as 7:01?
A. That's right.
Q. And the next day was 7:01?
A. That's right.
Q. And the next day 7:01?
A. That's right.
Q. The next day 7:01?
A. That's right.
Q. And the next day 7:01?
A. That's right.
Q. Then the next day was 7:01?
A. That's right.
Q. And the next day 7:01?
A. That's right.
Q. And the last day is 7:02?
A. You will notice two of the punches there are out at 4:45.

The Master: Is Eva Freddle one of the prompter girls in the department in getting in or is she one of the slow folks?

A. Eva is crippled, and I am not sure whether she

drove her own car or not. I know she had her own car that she drove part of the time. Whether she brought other people or else rode with other people, why, I am not sure about that, but, as I say, I would see Eva come in the department, and she would be humping along with the rest of the people. As I recall seeing Eva come in the department with the other girls, she would be talking to them, and I believe that she was one of the ones that came in early.

Q. (By Mr. Lamb) She was the one that testified here?

A. (Nodding).

The Master: Yes, I recall her very well.

A. Eva spent numerous times telling me about—

Mr. Lamb: Objection. Just a second.

The Master: All right, you can't volunteer a statement, witness.

A. All right.

Q. (By Mr. Lamb) I didn't understand you when you said or explained something about the method of paying the girls for cutting the decals. Did you say that there was any rate of payment for cutting the decals?

A. The employees that were on a minimum guarantee were paid, yes, and the employees that were on piece work were paid, yes. This was included in their piece rate.

Q. I am asking you, the rate that was given the girls for the time spent on cutting the decals? • • •

A. As I stated, the employees who were not earning the minimum on their piece rate, that the cutting was included in their hours, and that they were to have the guaranteed minimum of 30 cents an hour. The employees who were on the piece rate, and making more than the required minimum, why, this cutting the prints was figured in, in figuring the piece rate for each item in the department.

Q. (By Mr. Lamb) Do I take your testimony to be, Mr. Trabue, that ever since October 24, 1938, the girls have been given a minimum rate of 30 cents an hour?

A. They have not been—unless they earned more than that, yes. Everyone had the same piece rate.

Q. Just understand my question correctly so that they won't object. Do I understand your testimony correctly that in the event their piece work rates did not exceed 30 cents an hour, that all girls in your department ever since October 24, 1938, when the Wage and Hour law went into effect, have been paid at least the minimum rate of 30 cents an hour?

Mr. Cooper: Objection to the form of the question.

• • •

A. No employee in there ever made less than 30 cents an hour since that time.

Q. (By Mr. Lamb) No employee—you are referring to the decorating department, of which you are foreman?

A. That is right.

Q. No employee in that department has made less than 30 cents an hour?

A. That is right.

Q. Since October 24, 1938?

A. That is right; has, you might say, made or been paid; because they didn't make it in every case; they were paid.

The Master: Did you ever have any apprentice rates when they were paid less than 30 cents an hour?

A. Yes, way back. As I recall, we had four.

The Master: Never since the Wage and Hour Act went into effect?

A. 30 cents.

Q. (By Mr. Lamb) Do you have any knowledge about a deduction of 10 per cent from the pay of any employees during the first ten weeks in which they worked for this company?

A. There was such a plan for a short time, I remember of, yes.

Q. Was that in effect in your department?

A. Yes.

Q. Did you advise the new employees when they were

working there, that they were going to have 10 per cent taken out of their pay checks?

A. Yes, when I explained to them their earnings, like I told you previously, I explained that part to them, when it was in effect.

Q. What is your testimony as to whether or not this 10 per cent deduction from new employees' pay for the first 10 weeks in which they were employed, whether or not that was in effect since October 24, 1938?

A. I don't recall the particular period. I remember such a thing being in effect.

Q. Do you remember the year?

A. I do not.

Q. Could it have been 1939?

A. I wouldn't recall the year.

Q. In fact, it was in effect in 1940, was it not?

A. I don't know the year.

Q. You don't remember that?

A. No, I don't remember the period.

Q. Do you know girls who have had 10 per cent taken from their pay?

A. Yes, I have explained it to them, explained to the girls individually.

Q. Where did you get instructions to make that deduction of 10 per cent from the pay of these new girls?

A. Mr. Doll instructed us.

Q. Mr. Doll, Senior, instructed you to that effect, is that correct?

A. Yes, sir.

Mr. Cooper: Objection, and move to have that question and answer stricken. The form of the question is, "Deductions from pay," and the testimony which has been given here shows clearly that it wasn't a deduction from pay, but it was a lower rate of pay for a girl for 10 weeks; and, of course, the whole thing is immaterial because we don't know any of this happened after October, 1938, or whether it was all prior to 1938. • • •

The Master: The witness has testified as to his explana-

tion to the individuals when they started work, and I think with that in, that amplified the testimony sufficiently, so that I will let it stand. • • •

Q. (By Mr. Lamb) Did you tell these girls that 10 per cent was going to be taken from their pay check?

Mr. Cooper: Object to the form of the question.

The Master: He can state if that isn't exactly what he told the girls, he can state what he did tell the girls. He can state whether he told the girls that. Did you state to them that 10 per cent was going to be taken off?

A. As I stated, they were guaranteed 30 cents an hour minimum. It was explained to them the piece rate on each one of the items, whatever item they would be doing, and I pointed out to them their piece rate during this particular period was 10 per cent less than the full piece rate in the department.

Q. Do you know that 10 per cent was taken off of the minimum?

A. No.

Q. You don't know.

A. It was not taken off. • • •

Re-Direct Examination

By Mr. Cooper:

Q. I think, Mr. Trabue, you spoke of some toilet or restroom within the decorating department.

A. Yes, there was a toilet in there.

Q. Can you indicate that on Exhibit 30-A?

A. Here it is, right here.

Q. You are indicating the space on that exhibit marked "W toilet" somewhat to the left of and below the word "Decorating," is that right?

A. That's right. It is this space in here.

Q. Now, what was your observation, if any, with reference to whether or not after entering the department it was a common practice for girls to go to that restroom?

Mr. Lamb: Objection.

The Master: Overruled.

A. Yes, this was—

The Master: You may answer it.

A. This was a toilet, as I mentioned, here, and the girls, in coming in and particularly going out at the end of the day, they went to this toilet. In the morning they did go in, not all of them, but a good many of them would congregate there in and outside the door.

Q. Did you tell the Court where the strips of decal were kept overnight for the decal girls?

A. The ones that were to be used or the ones that they were to use the next day were kept at their benches.

Q. Was the gold for the liners, the gold that the liners were to use the next day, kept at their bench?

A. No. That was turned in at my desk every night.

Q. What was the reason, if you know, for that practice as to the gold?

A. Because of the value of the gold and because the receptacle it was kept in was glass and it was possible that it would get broken during the night in some shifting. It was also necessary to replenish their supply at night so they would have it the next day.

Q. Did you take any particular occasion before coming down here today to refresh your recollection as to the history of the Wage and Hour Law, Mr. Trabue? • • •

A. I didn't refresh myself on the particular time of this Wage and Hour Law changes. I have known all along that there were changes made. I didn't refresh myself as to the time that these changes were made.

Mr. Cooper: I wonder if we could straighten the record up, if the Court please. I would like to ask the witness to state in a general way what his recollection is about the history of the various changes and standards in this Wage and Hour Law.

Mr. Lamb: If the Court please, in the first place it isn't highly material as to this employee's description of the history of the Fair Labor Standards Act of 1938. We know what it is. As to the legal effect of it, that is.

Secondly, after a recess and after a witness has taken

the stand and given a statement and story and described events; it is improper under any theory to bring that witness back, even under the guise of clarifying his testimony, to have him revise what he has said on the direct examination. * * *

The Master: I remembered he mentioned 44, 42 and 40 hours.

Mr. Cooper: Precisely. * * *

The Master: Well, I think as to a question of dates witnesses often are confused and I think it is obvious to me and to everybody as to just what happened in the witness' testimony. I think Mr. Cooper is entitled to go into it. You went into it on cross-examination. I will let him go into it on re-direct.

You may answer the question.

The Witness: Read the question again, please?

The Master: Will you re-state the question?

Q. (By Mr. Cooper) What is your recollection, Mr. Trabue, as to the various standards as to hours or wages which have been in effect at different times since this Wage and Hour Law first became effective?

Mr. Lamb: Objection on the ground it is seeking to impeach their own witness.

The Master: Overruled.

A. I thought I answered that question right last time. We can have it read back. But, I asked when this 40 hour minimum wage and hour came into effect, and I understood him to say in 1938, so I answered accordingly. We were instructed at the time these changes were made in the wage and hour, we were at first on 44 hours per week, which ran one year, and then we went on 42 hours per week for a year, and then we went on 40 hours a week since that time, and as I answered that question I understood he gave me a time when the 40 hour week went into effect.

Mr. Lamb: I ask that the answer be stricken.

The Master: Overruled. * * *

A. At that time I asked Mr. Doll what years these

came into effect, I didn't remember the sequence of the years and I talked to him about the sequence of the years or brought out the three sequences about the 44, 42 and 40, to get the changes between the 44, 42 and 40. As I say, I thought I had answered that question. I thought I had asked the gentlemen here the question when this 40 hour came in before I answered it in my previous examination, as I understood, and that he gave me that date as being the 40, that the 40-hour came in, and I so understood I was answering him. • • •

Q. (By Mr. Cooper) In referring to this gentleman here in your last answer, for the record, you were referring to the gentleman sitting across the table from me, Mr. Edward Lamb, counsel for the plaintiffs?

A. Yes, that's right.

Q. Mr. Trabue, did you state during the course of the cross-examination by Mr. Lamb that you had or that the company had paid all of the girls employed in the decorating department a minimum of 30 cents an hour? • • •

A. I believe I stated that, but if, since the 40-hour didn't come in effect in 1938, that would be a statement or that would be—well, that wouldn't be correct. • • •

A. I asked when the various periods came into effect, and in our discussion I brought up the point that I had mentioned the 30-hour—or 30 cents an hour for this period, which I mentioned was wrong. The Judge had asked me shortly before recess if we had ever paid lower than 30 cents, and I answered "Yes, 25."

Q. Do you recall whether or not there were two minimum wages at different times under this wage-hour law?

Mr. Lamb: Objection. This is not proper. • • •

The Master: Frankly, on cross-examination, while I gave you free rein to go ahead and restricted them from making suggestions to the witness, it is quite obvious to me it isn't something that would make me lose faith in the witness and think he was coming down here and making up a big story because he made a mistake as to the date the 44 and 42 and 40 provisions of the Act went into

effect. Anybody could be mistaken about that. I think it took me awhile myself in this case to find out just when.

Mr. Lamb: I know, but if a witness has been coached on a story and he comes and tells that and gives a set of facts, describes the facts, and then on cross-examination I show the facts and the story are not correct, and he comes off the stand, then has a huddle with his lawyers or his boss, Mr. Doll, then goes back on the stand and says what he had said so positively before as facts is incorrect—

The Master: It is easy for me to see how he got confused. You asked him on cross-examination as to whether Mr. Doll stated in October of 1938 or thereabouts that the work week would be 40 hours or less, and he asked: "Is that the time the law went into effect"? It was stated that that was the time the Wage and Hour Law went into effect.

I can see how when he asked that, "Is that the time when the law went into effect," he might have been thinking was that the time the 40-hour provision of the law went into effect.

So it is easy to see why he might be confused on it. It is hard to see why there would be any reason on earth why he would want to testify that Mr. Doll cut down the work week to 40 hours before it was cut down to 40 hours. • • •

Re-Cross Examination

By Mr. Lamb:

Q. How big is the women's toilet in this department?

Mr. Cooper: Objection. If is in evidence on the scale plat, if your Honor please.

The Master: Overruled.

A. What do you mean, how big?

Q. (By Mr. Lamb) That's what I mean. How big are they?

A. You mean the estimated size of it?

Q. Yes. The number of seats?

A. Oh, not the number of seats there. That is a women's toilet and I haven't had occasion to go in there, except at one time when the toilet was running over, and there are four or five toilets in there, and wash bowl.

Q. Was it your intention to tell the Master that those 150 girls in your department all visited the toilet after punching the time clock and before they would go to their benches?

A. I didn't say that all of them did. I said that they came in at various times in the morning, and a good many of them did visit there and they congregated around in front of it and in the toilet. • • •

Q. After you finished your cross examination, is it not a fact that a recess was taken and that you then conferred with Mr. Doll, Senior, Mr. Cooper, Mr. Nunneley, attorneys, in regard to changing the testimony that you had given on cross examination? Did you talk to these men at recess about the matter of minimum pay? • • •

A. I did not talk to them about changing the testimony. I talked to them about the time that these laws came into effect, the three stages of the law, and I mentioned that I had made a mistake at that time. • • •

Q. Then did they say anything about changing your testimony in regard to this 30-cent minimum?

A. In what way?

Q. Did any one of these three men say anything to you about your testimony as to the 30-cent minimum since 1938?

A. I told them, and I believe I had testified to that effect.

The Master: The question is, did they ask you?

A. They said they believed I had, yes.

Q. (By Mr. Lamb) Did they advise you what you should say on your re-direct examination in response to the question that was propounded by Mr. Cooper?

A. They didn't advise me what to say. I knew that the change had been made. And it was brought out about

when it was paid, and I couldn't clear it up at that time. They didn't advise me to clear it up.

Q. Well, now, what is your story now as to whether Mr. Doll in the year 1938 advised you and the other foremen as to the adoption of the 40-hour week? Did he or did he not in the year 1938 make such a statement as you have testified before?

A. Since I have the date straight, he advised us on the 40-hour week when the 40-hour week became effective in 1940.

Q. Do you say that your testimony to the effect that his statement was given in 1938, November or December of 1938, was incorrect and that he did not make such a statement at that time to you or the other foremen?

A. Due to the conflict in dates, in 1938 he did not make such a statement as 40-hours.

Q. I see. So you say there was no such meeting as that you have testified to before, in 1938? • • •

A. In 1938 we had a meeting discussing that the plant was going on 44 hours and not 40. • • •

CHARLES E. DOLL, SR., was thereupon recalled as a witness, and being previously duly sworn, testified further as follows:

Re-Direct Examination

By Mr. Cooper:

Q. I hand you, Mr. Doll, a bundle of several sheets and ask you whether you can identify the sheets thereon which have been marked for identification as Exhibit 103 and 103-B?

A. Exhibit 103 and 103-B are sponge invoices from the Divers Sponge Company, Cleveland, Ohio.

Q. Where did you obtain the invoices?

A. These invoices were obtained from the voucher files of the Mt. Clemens Pottery Company.

Q. Do they represent purchases by the Mt. Clemens Pottery Company?

A. They do.

Q. Of sponges, from the Divers Sponge Company?

A. They do.

Q. And is what has been marked Exhibit 105, a similar document?

A. Exhibit 105 is an invoice for shipment of sponges received by the Mt. Clemens Pottery Company from the Divers Sponge Company, Cleveland, Ohio.

Q. Did you state the date?

A. Date of April 1, 1941.

Q. And can you identify what has been marked as Exhibit 106?

A. Exhibit 106 is an invoice for shipment of sponges received by the Mt. Clemens Pottery Company from the Divers Sponge Company, invoice dated October 17, 1940.

Q. And can you identify the sheets marked 107 and 107-B?

A. Exhibit 107 and 107-B are invoices for shipments of sponges received by the Mt. Clemens Pottery Company from the Divers Sponge Company, Cleveland, Ohio, under date of August 2 and August 21, 1940.

Q. And Exhibit 108?

A. Exhibit 108 is an invoice for shipment of sponges received by the Mt. Clemens Pottery Company from the Divers Sponge Company, Cleveland, Ohio; date of invoice, July 15, 1940.

Q. And Exhibit 109?

A. Exhibit 109 is an invoice for a shipment of sponges received by the Mt. Clemens Pottery Company from the Divers Sponge Company, Cleveland, Ohio, under date of November 30, 1939.

Q. And would you identify what has been marked as Exhibit 104 and 104-A?

A. Exhibits 104 and 104-A are invoices for shipment of rubber gloves received by the Mt. Clemens Pottery

Company from the Welton Rubber & Asbestos Company.

Mr. Lamb: Rubber, what was that?

A. Welton Rubber & Asbestos Company.

Mr. Lamb: What are the products that were purchased?

A. Rubber gloves. Under date of April 7, 1941.

Q. And can you identify what has been marked as Exhibit 110?

A. Exhibit 110, an invoice for an order of galvanized pails received by the Mt. Clemens Pottery Company from the Reeves Steel & Manufacturing Company, Dover, Ohio, under date of December 27, 1940.

Q. Mr. Doll, did you make a search of the records of the Mt. Clemens Pottery Company to ascertain whether there were any invoices since 1938 covering the purchase of scissors?

A. I was not able to find any invoices for the purchase of scissors, and upon inquiring from the stock room with respect to that particular item, they advised me that we have made no purchases of scissors for sale to employees since 1938.

Q. Did you make a search, Mr. Doll, of the invoices, to see whether you could find an invoice covering the purchase of scrapers?

A. I looked for an invoice for scrapers. I was alone at the office last night, and I was unable to find any invoices for scrapers, and upon inquiring this morning at the stock room, they told me that there had been no recent purchases for scrapers due to the fact that the advent of our automatic machines during recent years had left such a surplus of these hand tools around in the department, that the men had been using up the surplus stock of the jigger men who were no longer jiggering.

Mr. Lamb: Well—.

Mr. Cooper: If the Court please, we have produced and had Mr. Doll identify these documents pursuant to the Court's suggestion, for the purpose, as I understand it, of enabling Mr. Lamb, if he desires, to examine Mr. Doll concerning them. • • •

Re-Cross Examination

By Mr. Lamb:

Q. As I understand it from your Exhibit 104, the Mt. Clemens Pottery Company purchases rubber gloves at the rate of $2.70 a dozen, less the 2 per cent discount for the 10th of the succeeding month, is that correct?

A. The terms are shown on the invoice. I haven't got that before me.

(Exhibit handed to the witness.)

A. That is correct.

Q. That is at the rate of $2.70, was it, Mr. Doll?

A. $2.70 a dozen.

Q. And as I understand it from Exhibit 110, you purchased water pails?

A. There is only one type of pail on there that is sold to employees. That is the cheaper one. These upper ones are not sold to employees.

Q. The ones that are sold to employees—

A. Cost $2.50 a dozen.

Q. $2.50 a dozen?

A. Yes.

The Master: Has there been a standard price of 25 cents for each pail sold to employees?

A. Yes.

The Master: Or did that vary?

A. Well, it varied some, but that has been in effect for quite a while. It was definitely in effect at the date of these increases. I can show you the invoices covering that.

Mr. Lamb: No further cross examination, I think.

The Master: I suppose these exhibits that have been referred to ought to be in evidence, that is, Exhibits 104 and 110. Did you ask about these others, too, or what?

Mr. Lamb: I made notes on it. I guess I didn't ask him, but it has been identified, and I don't care about it.

The Master: Well, do you want to offer them?

Mr. Lamb: I don't care about offering them particularly. • • •

The Master: Well, suppose I just admit them in evidence and then the parties can stipulate that they will be in evidence, without either side offering them. Is that all right? • • •

The Master: Then that shows. All right, I will limit the admission on the invoices and permit you to substitute photostat copies for convenience.

Re-Direct Examination

By Mr. Cooper:

Q. Can you tell the Court, from Exhibit 110, Mr. Doll, the price the company paid for pails of the sort that was subsequently re-sold to employees?

A. $2.50 a dozen.

Q. And have you made any check of the company's records that discloses or refreshes your recollection as to the amount for which those pails were sold to employees?

A. They were sold to employees at 25 cents each.

The Master: When you say $2.50, they retail at that, but you actually paid 2 per cent less than that, did you not?

A. Your Honor, you can consult any business practice throughout the United States, and the cost of the article is always the invoice cost, not the cash discount. Cash discount never figures into the matter of the cost of an article.

The Master: Well, just to get it clear, whatever the business practice is, the cost, then, you say, would be $2.50 and the cash payment to the company billing the goods to you would be $2.45.

A. No. The billing price of the company is $2.50.

The Master: How much do you pay for it?

A. The 2 per cent allowed a person for cash discount is simply a gift on the part of the manufacturer to someone who pays his invoices in advance.

The Master: Well, do you pay by check for these pails?

A. We do pay them by check, yes.

The Master: And how much is the check that is made out to the manufacturer?

A. The check would be the amount of the invoice less 2 per cent.

Mr. Lamb: That is indicated on the back of the sheet.

A. It is covered on the back, yes.

The Master: In that case it would be $2.45.

A. I can't concede that. I can't concede that under business's practice.

The Master: Well, it is like my Edison bill. They bill me a certain amount, and then they deduct something if I pay it by a certain date. Why, they give me a discount. I don't know whether it is 10 per cent. I think it is 10 per cent, but anyway it is a substantial discount, quite a substantial discount, and the actual amount of the check I make out to them is the net amount.

A. In the case of the Edison Company, your discount is taken off by them in the first place, and it is a penalty if you over-run your time. That is the reverse condition.

The Master: All right. Well, go ahead. I think the facts are clear.

Q. (By Mr. Cooper) And what appears from Exhibit 104, Mr. Doll, and also 104-A, if there is any difference?

A. They are the same item.

Q. As to the price paid by the company for rubber gloves of a style subsequently re-sold to the employees?

A. The price charged the company is $2.70 a dozen.

Q. And was that similarly subject to any cash discount?

A. That invoice is also subject to the 2 per cent cash discount.

Q. And can you state the price at which those items were re-sold to the employees?

A. They were re-sold to the employees at 27 cents a pair.

Mr. Lamb: Well, what records have you looked at, Mr. Doll, to determine the price that these articles were re-sold to the employees at?

A. By a comparison of the payroll records of the same person. • • •

Q. (By Mr. Cooper) I think that you had stated—I am not sure whether you had—as to the sponges indicated in Exhibit 109, which the company bought at 20 cents each—how much were they resold to the employees at?

A. At 19 cents each. I also checked this price against our office record showing the current price being charged for—well, at the particular period—for deductions for the particular items.

Q. And what price on Exhibit 108, Mr. Doll, is—well, what appears as to the purchase price of the sponges covered by that invoice?

A. Exhibit 108 shows sponges charged to the Mt. Clemens Pottery Company at 20 cents each and sold for 20 cents each.

Q. And what is the situation with respect to the sponges referred to on Exhibits 107 and 107-B, if there is any difference there?

A. 107 is the only invoice in this group that refers to sponges sold to the employees. 107-B is a type of sponges used for other factory purposes and not sold to the employees. These sponges cost us 22 cents each and were sold at that time for 20 cents each.

Q. What was the date of that, Mr. Doll?

A. August 2, 1940.

Q. And what is the situation with respect to the sponges referred to on Exhibit 106, dated October, 1940?

A. The invoice of October, 1940, shows sponges costing the Mt. Clemens Pottery Company 25 cents each, and they were sold at 27 cents each.

Q. And what is the situation with respect to the sponges referred to in Exhibit 103?

A. Exhibit 103 shows sponges costing the Mt. Clemens Pottery Company 26 cents each, sold to the employees at 27 cents each.

Q. And the date of that is—

A. November 4, 1940.

Q. And what is the situation disclosed in Exhibit 105?

A. Exhibit 105 shows sponges purchased April 4, 1941, costing the company 35 cents each, sold to employees at 30 cents each.

Q. Now, on the occasion of searching for these invoices, Mr. Doll, have you obtained any particular familiarity as to the sum total amount in dollars of these supplies purchased for resale to employees?

A. I didn't attempt to make any tabulation, because I have known right straight along that we were dealing with chicken feed, and I felt that before and still feel it doesn't merit the effort put in on the matter. But, however, as I did go through it, I was impressed by one particular fact—

Mr. Lamb: (Interposing) Objection. We don't care what he was impressed by. * * *

The Master: Well, I wouldn't let him go beyond the question of these deductions, but this is still on the subject of these deductions for supplies. I will hear what he has to say.

A. As the result of the examination of the invoices, I definitely found out that when I had stated on previous testimony that the items, exclusive of sponges, would not exceed $1,000 a year, I found that a more correct estimate would be a few hundred dollars a year; considerably less than $500. * * *

Q. (By Mr. Cooper) What has been your observation, Mr. Doll, as to whether the company re-sells all of its sponges on those invoices?

A. Oh, we do not by any means. There is not a one of these items but what a considerable part of them are used up for other operations around the plant.

Q. Have you made any observation as to whether or not in the shipments of sponges, there are certain culls or items which are paid for but which can not be used?

A. These sponges come in bales which are packed at the fisheries, and they occupy—in a bale we will have varying qualities of sponges. You pay the same price for each piece in the bale, and theoretically they are supposed to be of equal quality. Some will be firm, regular-

shaped sponges; others will be irregular in shape or off-shape and soft, and we estimate that we have about 10 per cent culls out of each bale of sponges. * * *

June 26, 1942

Q. I notice, Mr. Doll, When court adjourned yesterday, there was a pending question unanswered as follows:

"I notice in the hearing here, Mr. Doll, reference has been made from time to time to a production belt department. Will you state what department, if any, is sometimes referred to in that way?"

A. It is my understanding that the references are to the glost belt system.

Q. Have you had occasion to make any observation or do you know how many shifts there are on the glost belt system?

A. The glost belt system is operated on a single shift.

Q. Whether or not there is any afternoon shift in that system?

A. There is no afternoon shift.

Q. Have you had any occasion to observe, Mr. Doll, the practice on the glost belt on Monday mornings?

A. I have. * * *

The Master: Well, this is their principal witness. In a long examination they might have forgotten a few things they should have covered. I think I will permit it if it doesn't get too extensive.

Now, will you answer the question? Have you observed the glost belt line on Monday mornings?

A. I have.

Q. (By Mr. Cooper) And what was your observation?

Mr. Lamb: Objection.

The Master: Overruled.

A My principal observation with regard to any change that had been made in the ordinary procedure of the

operation of that belt, was that at about the time of the 40-hour week going into effect, or in about October, 1940, that they established a practice of having a limited number of employees of that belt come in 15 minutes earlier than the rest of the force in order to load the belt with saggers for starting work.

Q. Have you previously testified, Mr. Doll, as to the length of operation, that is, the number of hours a day that the pressmen in the slip house are at work?

A. Yes. I had previously testified that they work on 8-hour shifts.

Q. Three 8-hour shifts a day?

A. Three 8-hour shifts daily.

Q. Have you had occasion to make any observation as to when these men eat their lunch?

A. These men do not check out for a lunch period due to the fact that they are somewhat muddied up by the handling of the clay, and that they simply stop their work at some convenient period during the 8-hour shift, and sit down right in the department, and take a lunch period of about a half hour.

The Master: Do they make that half hour up some other time, then, or are they credited with working?

A. How is that?

The Master: Do they make that half hour up some other time, then, or are they credited with working 8 hours?

A. They are credited with working 8 hours. In other words, that lunch period is not deducted off of the company's calculation as to the time worked.

The Master: They are paid on a piece work basis just the same as the others?

A. They are.

The Master: That was explained yesterday. Go ahead.

Q. (By Mr. Cooper) One of the plaintiffs in this case is Local 1083, United Pottery Workers of America, affiliated with the CIO. Can you state, Mr. Doll, whether this suit is the first instance of any action or proceeding

brought against the Mt. Clemens Pottery Company by that organization?

Mr. Lamb: Objection. It is immaterial whether it is the first or second, or whether this local has brought proceedings against them before the National Labor Relations Board, or Circuit Court, or anything else. • • •

The Master: If you simply want to show the proceedings that have been brought against you, I will let you go that far, but not beyond that into the entire relationship between the union and the management. I will hold it is too late to do that. And, instead of finishing this week, I am afraid we would get off into a situation where we wouldn't finish for several weeks. But, if you want to simply get on the record the proceedings that have been brought against you by this Local of the CIO, I will let you do that.

Mr. Lamb: Of course, I want the record to show my objection.

The Master: Yes.

Q. (By Mr. Cooper) Do you recall, Mr. Doll, whether or not any charges were filed against the Mt. Clemens Pottery Company by the CIO, or this Local of the CIO, in the autumn of 1940?

A. There were such charges filed with the NLRB.

Q. What were they?

A. They were charges of alleged discrimination or discharges of employees.

Q. And do you recall the date with reference to the time of the strike of April 14, 1941, that this action was instituted?

Mr. Lamb: Objection. • • •

The Master: I will hold that is already on the record. We have the date this action was instituted, and we have the date the strike took place. I thought you meant the date of the filing of the charges of the NLRB.

Q. (By Mr. Cooper) Do you recall, Mr. Doll, any proceedings with respect to a proposed NLRB election?

Mr. Lamb: Objection. That is a leading question, and also entirely immaterial in this proceedings.

The Master: Well, under the same ruling that I have announced, he may answer.

A. I recall that Local 1083, CIO declined to become a party to an election during the first strike in 1941.

Mr. Lamb: I ask that the answer be stricken.

The Master: It may stand. • • •

Q. (By Mr. Cooper) Are you familiar, Mr. Doll, with whether or not any proceedings were brought by Local 1083 with the Michigan Department of Labor and Industry?

Mr. Lamb: What difference does this make? After all,—I object to it.

The Master: I will just take, to get on the record,—it is certainly a matter that can not be very much in dispute whether or not proceedings were brought in court, or before administrative tribunals, and I will take the evidence.

Q. (By Mr. Cooper) What happened in that connection, Mr. Doll?

The Master: As to whether proceedings were brought.

A. To my knowledge, complaints were made to the Michigan Department of Labor that the Mt. Clemens Pottery Company was operating equipment that was unsafe for employees to work with.

Q. And what was your observation as to the result of the filing of that complaint?

Mr. Lamb: Objection. • • •

The Master: Well, he may state whether an investigation was made.

A. An investigation was made by a personal visit to the plant by the Commissioner of Labor and his chief deputy.

The Master: I think as to the results of the investigation you have already stated there was no formal proceeding before the Commission, nor formal action taken. I don't think it is proper, particularly on a collateral matter like this, for the witness to state what the inspector told him, and I will let it rest at that point. If

you want to make an offer of proof on that you can do so.

Mr. Nunneley: In that connection we offer to show that the Department of Labor & Industry found the complaints to be without foundation. • • •

Q. (By Mr. Cooper) Mr. Doll, do you know whether or not in the autumn of 1941 Local 1083 filed any charges in the Michigan Department of Health?

Mr. Lamb: Objection.

The Master: Same ruling; he may state whether they filed charges, if he knows.

A. There were charges filed with the Michigan Department of Health that the Mt. Clemens Pottery Company was unsanitary and an unhealthy place in which to work.

Q. (By Mr. Cooper) And what was the result of that charge, so far as you know?

Mr. Lamb: Objection on the same ground that the Master has already ruled.

The Master: Yes, I think—if you don't have any formal action by the Department. I don't think I will permit it.

Mr. Nunneley: We can offer proof that the complaint was found to be without merit and unfounded by the Department and was in fact without merit and unfounded. • • •

Q. (By Mr. Cooper) About what time was that, Mr. Doll?

A. To the best of my recollection, it was about in September, 1941.

Q. Do you have any knowledge or recollection as to whether or not at about that same time, any further charges were filed by Local 1083 with the NLRB?

A. We were so advised by the NLRB.

(Certified copy of petition in case of Eric Sopha vs. Mt. Clemens Pottery Company was marked Defendants' Exhibit 111.)

Mr. Cooper: At this time, if the Court please, and in connection with the present line of investigation, I offer in evidence a document which has been marked

as Exhibit 111, and which is a certified copy of the petition and affidavit and attachment to obtain an order of garnishment in proceedings entitled Eric Sopha et al. vs. the Mt. Clemens Pottery Company, filed December 6, 1941, in the Court of Common Pleas for Lucas County, Ohio, and bearing the number 159790. • • •

Mr. Lamb: There is an objection to the exhibit on the ground this has nothing to do with this litigation and is immaterial.

The Master: I will admit it without ruling on its legal effect. There has been some testimony about that, and it will show what reference is made to in that testimony. • • •

Mr. Lamb: All right, I would like to call a witness out of order. Could we take a short recess?

The Master: Do you want a recess first?

Mr. Lamb: Yes.

The Master: All right, we will take a recess.

(Recess.)

JAMES H. WISHART, was thereupon called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows: • • •

Direct Examination

By Mr. Lamb:

Q. Will you give us your residence address, please, Mr. Wishart?

A. 9952 Ward, Detroit, Michigan.

Q. Ward?

A. Ward Street, yes.

Q. What is your business address?

A. 281 West Grand Boulevard, Detroit, Michigan.

Q. Will you kindly tell us what business you are in, or

what is your capacity with the organization with which you are associated?

A. I am employed as director of the research department by the United Automobile Aircraft and Agricultural Implement Workers, CIO.

Q. How long have you been the head of the research department of that organization?

A. I have been employed there since January of 1940.

Q. And prior to that did you have association as research or educational director of any other organization?

A. I was employed prior to that by the United Rubber Workers, CIO, at their headquarters at Akron, Ohio.

Q. In these research and educational capacities?

A. In these research and educational capacities.

Q. The International Union of which you are now the research director is the largest trade Union, is it not, in the world, at the present time?

A. That is our conclusion from an examination of reports.

Q. With more than a half million members?

A. We estimate about 700,000 at the present time.

Q. Workers throughout the automotive equipment, aircraft, farm implement, and other allied industries, is that correct?

A. That is correct.

Q. And located throughout the United States and Canada?

A. That is correct.

Q. In your capacity as research director of this international trade Union, have you had an opportunity to examine contracts and pass upon contracts, and know the contents of contracts that are in existence throughout the industries mentioned?

A. That is correct. The contracts signed by local unions are submitted to the international union, and it is part of our responsibility to examine and analyze those contracts, to make recommendations to the international officers in connection with them, and to keep on record a complete tabulation of the provisions of such contracts.

The Master: That is, in unions generally throughout the United States?

A. These contracts are submitted by the local unions of our own international union. In addition to that, we have had as part of our responsibility for purposes of negotiation to keep in very close touch with provisions being established in other contracts for other organizations.

Q. That is, contracts not only in the industries with which your international is concerned, but in industries of all kinds throughout the United States?

A. That is correct. That is, a provision, say, in a contract for a steel plant, over which we have no jurisdiction, may establish certain principles, which may be applied to our own contracts. For that reason it has been part of our duty to keep a very close check on all such developments.

Q. You had a kindred experience prior to 1940, you say, as research—

A. We had similar responsibilities, yes, for the United Rubber Workers.

Q. United Rubber Workers. Can you give us some rough idea of the number of contracts which your own organization has with various companies throughout the United States?

A. We have a total of about 1000 contracts. Of course—

Q. For instance, a General Motors contract, although it would cover—

A. It covers 97 plants at the present time.

Q. That particular contract—

A. That is right.

Q. (Continuing) —might cover 97 plants, you say?

A. That is right.

Q. And that would be true of Ford or any plant, or company that might have several plants?

A. We have a number of corporations that have corporation-wide agreements; General Motors, Ford, Chrysler, and I think the Eaton Spring Company, and a num-

ber of others have established their contractual relationships with us upon that basis.

Q. Do you subscribe to various news and research publications covering labor and working conditions generally?

A. We believe we have a very complete coverage and our budget for publications of that kind is very generous and it is our opinion that we receive all the publications reporting developments in collective bargaining which might be of any conceivable value to us or the international union.

Q. In your experience with these matters concerning employment relationships, you have, therefore, been able to obtain an opinion or form an opinion about the custom prevailing in industry relative to working conditions, and particularly with reference to the time worked by employees, is that correct?

A. That is correct, and I might say in supplementing that point that of course we have had very considerable direct personal contact in negotiations with negotiators and with local union officers in regard to plant procedure and other matters affecting possible collective bargaining relationships.

The Master: Does your own experience go beyond that, to the provisions in collective bargaining agreements, and go to actual plant conditions that are not embodied in the agreements?

A. For situations which, say, are not directly referred to in the collective bargaining agreement itself.

The Master: And that experience is based upon the contacts you have had with management.

A. That is correct, and our own local union officers and representatives.

Q. (By Mr. Lamb) Can you advise us from your experience and observation your conclusion as to the payment made by employers, the custom of making payment by employers for time worked by employees?

A. The principle established there is that—

Mr. Nunneley: Just a minute, the question is can he advise him; it doesn't call for a statement.

Mr. Lamb: You can say first yes or no.

A. Yes.

Q. (By Mr. Lamb) And will you advise us then what your conclusion is? • • •

A. The principle there is that every minute's work shall be paid for at the established rate for the classification by the employer. • • •

Q. (By Mr. Lamb) Can you advise us whether preparatory work, or what the custom is with reference to preparatory work such as getting machinery ready or the equipment in position and ready for active production work? Can you advise us what the principle or custom is with reference to the payment for this so-called preparatory work, getting equipment and machinery ready for productive work?

A. The first few minutes of a worker's regular shift time may be taken up, if the job requires it, in making incidental preparations for direct production itself. I know of one case where it is necessary to heat lead before production can start. In that case, one representative of the group of workers will come in ahead of time for that purpose, but he is paid for that time at his regular rates.

The Master: How long does that particular job take?

A. I believe that must be about a half hour.

The Master: What can you say as to changing clothes or putting on uniforms that may be necessary in the work?

A. Usually after a—may I outline the general practice in UAW plants?

The Master: Yes. Perhaps Mr. Lamb was going to bring it out.

Mr. Lamb: That is all right, go ahead.

A. The men will punch in their clock before the starting time of their shift, that is, before they have to go to work. Then they take their coats off and go on to the job at the official time for the starting of the shift, and the

first minute worked on the shift is paid for, naturally, as part of the regular compensation for the day's work.

The Master: Just to take a concrete case, suppose you have a plant where the shift is supposed to start at 7 o'clock and there is a whistle that blows at 7 o'clock. We will say the employee's place of work is 100 feet beyond the time clock and that before starting on his work he has to change from his street clothes to overalls, or put overalls over his street clothes, we will say. When does he do that job of changing his overalls, putting his overalls on?

Mr. Lamb: What I wanted the Master to include in the question, or at least to clarify to the witness, is whether or not the employee has changed his clothes in the cloak room before punching the time clock. I wonder if that is—

The Master: I was asking what the practice was. We will assume it is summer time, when he doesn't have to change any clothes, but simply put overalls over the clothes, so as to protect his clothes from dirt and grime. Is that common, or do they usually make a complete change of clothes?

A. In most cases, there is no change of clothes involved.

The Master: That is, the man comes to work in his working clothes?

A. Yes. Of course, a welder will probably have to pick up his mask. That may be done a few seconds before work actually starts.

The Master: Do you mean by that a few seconds before the whistle blows?

A. That is correct.

The Master: Are you familiar with instances where employees must put on overalls or do put on overalls before starting their work?

A. I am familiar with the cases where men place—put on aprons. That is done as part of the preparatory work in the few seconds after the whistle blows, in the minute

or so after the work technically has started for the day.

The Master: Are you familiar with cases where after the employee gets to the plant, he makes a complete change of outfit, that is, takes off his clothes that he comes to the plant in, and puts on a uniform or older clothes that he can do his work in?

A. I am not familiar with such cases.

Q. I wanted to ask you, Mr. Wishart, the practice where an employee is tardy, and, if possible, if you will refer to existing situations of that sort in this area. Assuming that an employee punches in at 7:01 in the General Motors plant, for instance, is one minute late, that is, after the whistle blows at the General Motors plant and he punches in at 7:01, what is the practice with reference to tardiness of that sort?

Mr. Nunneley: Just a minute, if the Court please. We are going to object for the reason there is no claim made in this case about any deductions for tardiness. • • •

The Master: Even if it isn't too closely related to the other claims here, it is very closely related so that I will take the evidence on it.

You may answer.

Q. (By Mr. Lamb) Will you explain the practice in this area with reference to tardiness where an employee punches in at 7:01, for instance, after the regular starting time?

A. There are two general procedures for handling that. In General Motors plants, for instance, if the employee comes in at 7:01 he will not receive credit for work done between 7:01 and 7:06. But, he is not required to work those minutes. If he wants to work those minutes, he can do it, but he won't receive pay for those minutes.

Q. He is not required to work until 7:06?

A. He is not required to work until 7:06. In other plants, if a man comes in, let's say, 5 minutes late, he is given the privilege of working an additional 5 minutes at the end of his shift to make the full 8 hours of employment for the day.

The Master: Is there any penalty that is invoked for constant tardiness? Suppose a man keeps coming in a few minutes late every day?

A. That would give rise to the possibility of disciplinary action determined by corporation and union policy in the particular plant. That is, it might, if it were a serious offense, and one continued, result in two or three days' disciplinary layoffs. It might affect a man's standing in relation to possible promotions.

The Master: Are you familiar with any instances where, under plant practice, a man comes in at 7:01 in the morning when the shift starts at 7 o'clock, he is paid only from 7:15; that is, 15 minutes after he is supposed to start?

A. No, there is no such instance in the industry. I can say that with considerable confidence. . . .

Q. (By Mr. Lamb) Now, when you have referred to the General Motors practice, if an employee is tardy and reports at 7:01, he gets paid from 7:06, that he does not have to work until 7:06, did you give that statement based on knowledge of a contract or is that a practice or agreement entered into between the union and the management? Just how is that practice fixed?

A. That is not included in contracts. It is a matter of corporation procedure against which the union has made no objection.

The Master: In other words, he is paid in the General Motors plants, if he comes in a minute late, he is paid for six minutes less time during the day?

Mr. Lamb: Five.

The Master: Five minutes?

Mr. Lamb: If he comes in at 7:01 he is paid from 7:06.

The Master: If he comes in at 7:02, he would be paid from 7:06, would he not?

A. That is correct.

The Master: In other words, he is paid six minutes less time than if he came in on time, and he doesn't have to work during that six-minute period.

Mr. Lamb: That is correct.

A. That is correct.

The Master: I suppose that that period is arrived at because 6 minutes is a tenth of an hour and facilitates bookkeeping practices?

A. That is correct.

Q. (By Mr. Lamb) Are you able to advise us whether in the Motor Products Local, in a small shop where the men may be up to 14 minutes late without deduction from their pay, whether or not there is a provision in that relationship allowing the company to work the men that extra amount of time in the evening without the payment of overtime?

Mr. Nunneley: We object to that. Now, instead of testifying about any opinions or customs, he is testifying about what is supposed to be in an agreement with somebody. • • •

A. This is not a matter of formal agreement, it is a matter of so-called shop practice.

The Master: Well, then, I will take the answer. • • •

A. The practice in this case is this; a man will be allowed to be up to 14 minutes late without suffering any penalty whatsoever, but there is the understanding that within due time he will work 14 minutes overtime to compensate for that tardiness, although the 14 minutes overtime may not be given on the same day.

The Master: What happens if he is 15 minutes late?

A. There are other penalties involved there.

The Master: Do you know what they are?

A. It doesn't involve directly the question of pay one way or the other.

The Master: Can you tell me what those other penalties are?

A. It is along the lines which I discussed before, that is, possible disciplinary action through disciplinary layoffs, through a bad record, and other penalties of that kind.

Q. (By Mr. Lamb) Mr. Wishart, what is the customary practice in the industry generally in a case where

an employee reports at the employer's plant, goes to the cloak room, prepared himself for work, goes to the time clock, punches in at 6:46 A.M., punches out the time clock at 11:14, arrives back from lunch at 12:14 and checks out at 4:10. Assuming that the employees takes a minute or two from the time clock to go to his premises and enter productive work, what is the practice with reference to the payment in such case?

A. They would be paid for every minute of work.

Q. As indicated by the time clock?

A. That is correct. I might add to that, that the practice prevailing in a number of plants will allow for a five-minute cleanup period before the end of the shift, assuming, say that a shift terminates at 11:55, the workers on the assembly line there will be given 5 minutes to stop their work and get prepared to eat their lunch in the period given them.

The Master: You say that is done in a number of plants—

A. The General Motors plant is particularly what I was referring to there.

The Master: Are there some other plants you are familiar with where that clean-up has to be done?

A. That has come to be very much of a standard practice in the large majority of UAW plants.

Q. (By Mr. Lamb) As I understand it—

The Master: May I just get an answer to that, as to whether there are plants that you are familiar with with which the UAW have contracts, where the cleanup is on the employee's time after the whistle blows and they go to lunch?

A. I think there have been such plants in the past: whether they exist now, I don't know.

Q. (By Mr. Lamb) So that in the situation that you are describing as the general practice of allowing the employees from 11:55 to 12:00 to clean up, they are paid to 12:00, are they not?

A. That is correct.

Q. And this five minutes is merely a clean-up period that permits the employees to stop the actual productive work and put their tools in place and possibly clean up and get ready to leave, is that correct?

A. That is correct.

The Master: May I ask this: In the hypothetical case I mentioned a few minutes ago where the shift begins at 7 o'clock, the time clock is 100 feet from the place where the employees begin work, and the whistle blows at 7 o'clock sharp, is the practice to require the employee to be at his position of work at 7 o'clock, or to punch the time clock in at 7 o'clock?

A. The employees in most plants will be allowed to come in as much as a half-hour before the whistle blows for the actual beginning of work on the shift. They will come in, say, at 6:30. They will stand around, in some cases smoking cigarets and gossiping. They will take their coats off, punch their time clock. The punching of the time clock is immaterial in determining the exact beginning of work for them. But at 7 o'clock their pay period starts, although at 7 o'clock in many cases they may not be immediately at their machines.

In the same way, during the day there will be periods when the men will move away from the machines for various reasons.

The Master: Well, I understand that.

A. And he is paid for that period.

The Master: But I was thinking of this precise instance: we will say it takes 2 minutes to get from the time clock to the place of work in the morning. If the employee gets in at 7 o'clock, punches the time card a few seconds before the whistle blows, gets over to his place of work at 7:02—in other words, is the practice to have them punch the time clock by the time the whistle blows, or to be at his place of work or else doing other duties around the place, ready to do other duties around the plant at the time the whistle blows?

A. The punching in is simply employed primarily to

indicate the presence of the worker in the plant for that day. It doesn't bear a direct relationship to the actual starting time of his shift. If the worker is punched in and is in his own department, it will be assumed that he starts to work at 7 o'clock, even though actually he may not be at the machine at that time.

The Master: But he is supposed to be in his department at that time?

A. That is my understanding.

Q. (By Mr. Lamb) Your reference to the punching in is with reference to those plants where the employee is permitted, for instance, to go to his time clock, or go to the cloak room or smoke or relax—

A. (Interrupting) After he has punched in.

Q. (Continuing) —between the time of the punching in and the time of the work?

A. That is correct.

Q. And has no reference to the place where an employee punches in and goes directly to work on productive labor immediately upon punching the time clock?

A. There is usually—

Mr. Nunneley (Interposing) We will object to his cross-examining his own witness.

Mr. Lamb: I am not.

The Master: I will take the answer. It might be objected to as leading.

Mr. Nunneley: Very leading.

The Master: I have sometimes permitted leading questions. I will let the witness answer in his own way.

A. The principle there that is in the generality of these plants, the actual punching of the clock will not coincide with the starting of work. The man will punch his clock, will stand around as I have suggested. But the productive work itself will begin according to the shift schedule, and the man is therefore paid according to the shift schedule itself. If I may refer to the practice at Packard, there you do have an exception.

Mr. Cooper: Excuse me, is that Packard?

The Master: Packard, yes.

A. Packard Motor Company. There the men are paid as soon as they actually start to work, whether that may be a few minutes before 7 o'clock or a few minutes after 7 o'clock.

Q. (By Mr. Lamb) I am referring again to the matter of your testimony with reference to the time clock being a record of attendance and not being a record of working time applies only to those plants where the employee is not required to go directly to work after punching the time clock?

A. That is correct.

Q. "And where the time clock indicates the time of arrival, where the employee is prepared to and does go to work, then I want the custom as to the payment for the time worked in reference to the time clock in such case.

A. In that case the pay would begin immediately following the punching of the clock.

The Master: In this Packard plant you say the employees are paid from the time they commence work even if it is before the time the whistle blows?

A. That is correct.

The Master: How is it determined as to the time they do commence work?

A. I understand that is a case where the time clock is established in the department so that the worker can punch the clock to indicate when his work starts.

The Master: They have a time clock right in the department?

A. That is right.

The Master: Do they also have a time clock at the door which he first punches?

A. No, not in that case.

The Master: And when the workman will get in in the morning, will he proceed immediately to work, or will he wait for instructions from the foreman to show when he is to start work?

A. I am not familiar enough with the practice to give

an answer to that question that I would have confidence in.

The Master: I don't suppose it is a situation where the employee can come in at any time in the morning and go immediately to work regardless of whether the plant is ready to have him start or not?

A. That is a fact. It is a question of a minute or two leeway one way or the other around 7 o'clock.

Q. (By Mr. Lamb) I assume in the Packard plant there may be hundreds, or even thousands, of men, are there not?

A. That is correct. • • •

Cross Examination

By Mr. Nunneley:

Q. Mr. Wishart, you of course have never been to the plant of the Mt. Clemens Pottery Company, have you?

A. No, sir, I haven't had that privilege.

Q. And you have never been, or have you ever been in any other dinner ware manufacturing plant?

A. I have been through a number of them some years ago; I can't claim familiarity with your personal practices, however.

Q. Do the companies in this area ordinarily get out printed booklets which have their shop rules, and so on, in them, Mr. Wishart?

A. A number of companies do.

Q. And you are familiar with those, are you?

A. I am familiar with some of them, though those are not matters of collective agreement usually.

Q. No, but you do know as a matter of fact the companies quite generally circulate among employees such things, do you not?

A. Shop rules are sometimes circulated to employees, that is correct.

Q. And I suppose in the course of your research work you know what the practices and so on are; you have become familiar with booklets?

A. We have looked at some of them.

Q. I will show you a booklet that has been marked Defendants' Exhibit 66, and ask you if you can tell us what that is (handing booklet to the witness)?

Mr. Lamb: Objection. This witness can't identify that.

The Master: On cross-examination he can ask him whether he has seen it before.

Q. (By Mr. Nunneley) You have seen it? • • •

A. I haven't seen this particular copy before. As I remember it, the copy of the agreement at the Budd Wheel Company which we have in our files is a mimeograph reproduction of collective bargaining agreements.

• • •

Q. (By Mr. Nunneley) Is that document, Exhibit 66, I believe it is, the type of document at least that is quite commonly circulated among people as representing collective bargaining agreements and shop rules? • • •

A. It has the appearance of being of a similar type, yes. • • •

Q. I presume if requested you could make a comparison for us and ascertain whether this is a correct copy?

A. I could make a comparison to ascertain whether the contract as printed there was a correct copy of the contract. I would not at the present time have the material to check on the shop rules, which in this case have been printed along with the contract. • • •

Q. It is a fact, however, isn't it, Mr. Wishart, that there are generally circulated among employees and among persons who might be interested in labor relations, booklets which at least purport to contain the contracts and shop rules of quite a large number of companies, isn't that right?

A. That is correct. • • •

Q. (By Mr. Nunneley) I will show you booklets that are marked Exhibits 66, 67, 68, 69, 70, 71, and 72, and ask you if those are such booklets as you have just been describing to the Master (handing exhibits to witness)?

• • •

A. From the appearance of these books, I would assume that they represent a statement of company policies. • • •

The Master: Pardon me, what is this statement that you have here, this typewritten matter?

Mr. Lamb: That was prepared for me.

A. This is just notes for my own memory in regard to running practices.

Mr. Lamb: He got this up for me.

The Master: I am quite interested in this question of the general practices in industry.

Mr. Nunneley: Under the circumstances, may we see it?

Mr. Lamb: Not particularly.

The Master: I beg your pardon?

Mr. Lamb: He asked whether under the circumstances they may see it. I asked Mr. Wishart to get up some notes so that I could question him on it when he testified.

I don't think I care to introduce it particularly, because it is more or less question and answer form.

The Master: I noticed he was referring to it in his examination.

Mr. Lamb: That is right.

The Master: I thought there might be something in there that would be helpful on the subject. Has everything been covered that is in your notes there?

Mr. Lamb: Here is one, Local 155 Amalgamated Local Union, would you want to read your notes on that?

The Master: Were these notes made based on your recollection of practices?

A. They were made on the basis of recent conversations with business agents, officers, and committee men from these local unions, and I had them with me primarily for the purpose of refreshing my memory in regard to certain basic points.

Mr. Nunneley: Conversations over what period of time, Mr. Wishart?

A. The last week.

Mr. Lamb: Can you advise us about the Local 155, Amalgamated Local Union having jobbing foundries and small parts plants similar to the Mt. Clemens Pottery plant?

A. Local 155 is an amalgamated tool and die local; including a number of production shops, a certain number of foundries. The report we had as the basis of our investigations indicates that in not one plant of this local is there a situation in any way analogous to that which I have heard referred to in the Mt. Clemens Pottery.

Mr. Nunneley: We object to that. We don't know what he has heard referred to.

The Master: I don't think he can testify that way.

Mr. Lamb: Do they get paid for every minute they work?

The Master: You can testify to what the practice is, but since you aren't familiar with the practice in the Mt. Clemens Pottery Company, you can't compare the two.

A. That is correct. There the universal practice, and I took this as random practice, if the regular starting time is 7 and the company calls in its workers at 6:30, they got time and a half for that half hour worked. This provision itself is included in 90 per cent of the agreements.

Mr. Lamb: That is, that they get paid for the minutes that they work?

A. That is right.

The Master: And they get time and a half under the agreements, regardless whether they are working overtime under the wage and hour act?

A. That is right. * * *

CHARLES E. DOLL, SR., thereupon resumed the stand as a witness herein, and being previously sworn, testified as follows:

Re-Direct Examination (Continued)

By Mr. Cooper:

Q. What is your recollection, if any, Mr. Doll, of any Circuit Court proceedings in the Macomb County Circuit Court in January of this year involving Local 1083?

Mr. Lamb: Objection. • • •

The Master: Well, I don't see the materiality of that on the point you are raising. I will sustain the objection.

Mr. Nunneley: Mark this, please.

(A document was then marked Defendant's Exhibit 112.) • • •

Mr. Nunneley: We offer to show, to prove by competent testimony in this case, that in May of 1941 a suit was brought by the Mt. Clemens Pottery Company, a Michigan corporation, plaintiff, against the United Pottery Workers, a labor union affiliated with the Congress of Industrial Organization; Steve Anderson, president of said union; Floyd Pearl, vice-president of said union; Lillian Socia, financial-secretary of said union; Margaret Yokum, recording-secretary of said union; Severino S. Pollo, Organizer for Congress of Industrial Organizations; August Scholle, Regional Director, Congress of Industrial Organizations; Frank Settle, Organizer, Congress of Industrial Organizations; George Foster, Organizer, Congress of Industrial Organizations, defendants, being cause No. 12066 in the Circuit Court for the County of Macomb, in chancery, in which cause it was charged that the defendants and their members were interfering with the employees of the plaintiff and with persons who desired to enter the employ of the plaintiff by way of threats, personal violence, intimidation, and in

other illegal manners; that they were interfering with the free access, ingress and egress of the employees of the plaintiff or the public—when I say "plaintiff" I am referring to the plaintiff in the chancery case out there—that they were gathering in large crowds in the neighborhood and preventing people from entering the plant, and that they were preventing deliveries of goods to the plant, and the entrance to the plant by persons having business therein by obstructing highways, sidewalks, railroad sidings, and other ways leading to it; that they were congregating upon and blocking the railroad tracks of the Grand Trunk Railway Company leading into the plant; and that they were blocking and interfering with the highways leading into the plant; and that a temporary injunction was issued restraining the defendants, being the plaintiff union in this case, and the named defendants, some of whom are here, together with all members of the organization, from doing those things, a temporary injunction was issued, which injunction was later made permanent by the Circuit Court for the County of Macomb, in chancery, by a decree issued on the 22nd day of January, 1942, which decree has been marked for identification here as Defendant's Exhibit 112, and which decree we now offer in evidence, being a copy of the decree, bearing the seal of the court.

The Master: Well, I don't think it is material in this case, and I will exclude it.

Q. (By Mr. Cooper) What is your knowledge, if any, Mr. Doll, concerning charges filed by Local 1083 with the National Labor Relations Board against the Mt. Clemens Pottery Company in April of this year?

Mr. Lamb: Objection.

The Master: He may answer.

A. It is my understanding that after this Local 1083 called off the strike of November 24th on about March 16, 1942, that they filed charges with the NLRB because they were not all immediately put back to work.

Q. (By Mr. Cooper) What is your recollection, Mr. Doll, as to whether or not prior to this strike of April

14, 1941, Local 1083 served upon the company any advance written notice?

Mr. Lamb: Objection.

The Master: We are not going into the question of the propriety of the strike, and you have already asked him about any demands made in connection with wages and hours, and he has answered that. I will sustain the objection.

Q. (By Mr. Cooper) What is your recollection, if any, Mr. Doll, as to acts of violence committed by Local 1083 and its members during the strike which started April 14, 1941?

Mr. Lamb: Objection.

The Master: Sustained. If I permitted that, we would be in another several weeks' investigation.

Mr. Nunneley: If the Court please, may we make the offer of proof covering these things?

The Master: Yes.

Mr. Nunneley: On behalf of the defendants in this case and for the purpose of affecting the credibility of the witnesses, establishing the motives of the plaintiffs and establishing a conspiracy to harass and annoy this defendant, we offer to show by competent testimony in this case that during the fall of 1940 the CIO Local 1083 filed charges of union discrimination at the Detroit office of the National Labor Relations Board.

That on April 14, 1941, the plaintiff union called a strike without the legal notice required by the laws of Michigan, gave no reason and made no demands, which said strike was called for the purpose of furthering an organizational drive.

That on April 16, 1941, as the record shows, they started this suit.

We further offer to show that during the strike of April 14, 1941, the plaintiff union and its members, including many of the persons designated as plaintiffs and persons whom the union represents in this case, resorted to a series of unlawful acts intending to coerce and in-

timidate both the employees of the defendant who did not belong to the union, and the employer, Mt. Clemens Pottery Company.

That a considerable number of the plaintiffs in this case, including in the plaintiffs the designated persons represented by the Union, were convicted of crimes growing out of and in connection with violence perpetrated upon the employees of the Mt. Clemens Pottery Company who did not belong to the union, in their attempt to coerce said employees and the employer.

That in addition there, an injunction was issued by the Circuit Court for the County of Macomb, and the Governor of the State of Michigan found it necessary to send state troops to Mt. Clemens to preserve order and to protect the plant of the employer against the violence and coercion and intimidation being practiced by the plaintiff union in this case and its members, including many of the desigated people who are here.

That on May 12 the plaintiff union called off its strike after it became public knowledge that there were only a small minority— • • •

The Master: Go ahead.

Mr. Nunneley: May 12, 1941, the plaintiff union, Local 1083, called off its strike after it became public knowledge that they were only a small minority, and that being in fact only a small minority, and after a collective bargaining agreement had been made with another organization, and that all of the members of the plaintiff union and of the designated plaintiffs who so desired went back to work at the Mt. Clemens Pottery at that time;

That in the course of that proceedings, in the course of that strike, this plaintiff union refused to be a party to a National Labor Relations Board election;

That on July 2, 1941, a number of the designated plaintiffs, persons represented here, conspired to stage a walkout at the Mt. Clemens Pottery and secretly shut off the power on the glost belt, five of them walking out at that time, the remaining employees remained at their jobs;

That on August 28, 1941, the plaintiff union in this case served a notice to strike on the Mt. Clemens Pottery Company;

That in September of 1941 the plaintiff union took a strike vote, not revealing in their minutes or otherwise how many were present at their meeting, or how many voted, one way or the other, in connection with it;

That on November 21, 1941, the complaining union, including several of the designated plaintiffs in this case, made plans to cause a walkout at 4 o'clock in the afternoon and that some of the conspirators, including the vice-president of the union, shut off the power and walked out of the plant, only a small number, however, walking out at that time—some five people. We offer to show by competent testimony that on November 24, 1941, plaintiff union, including many of the designated plaintiffs, called a second strike and again engaged in unlawful acts for which many of their members were convicted in court, fined, and for which an additional very considerable number were convicted for contempt of court for violating the injunction of the Circuit Court for the County of Macomb;

That on November 24, 1941, the Governor of Michigan again found it necessary to send state troops to Mt. Clemens to protect a large number of employees desiring to work at the Mt. Clemens Pottery Company against violence, and that with the protection of the state troops the employees were able to continue their work and that the plant was not closed and production did not cease.

We are prepared to show, and offer to show, that during the strike of April 14, to May 13, 1941, members of Local 1083, the charging union, and other CIO members, picketed various stores of the S. S. Kresge Company in Mt. Clemens, Detroit, Pontiac, and elsewhere, in an attempt to injure and interfere with the business of the S. S. Kresge Company that pressure might be brought to bear upon the Mt. Clemens Pottery Company, and that also during the strike beginning November 24, 1941, and especially during December, 1941, and January, 1942,

members of Local 1083, including some of the designated claimants in this case, and other various CIO members, picketed various stores of the S. S. Kresge Company in Detroit, Pontiac, and elsewhere, stopped freight deliveries, and interfered with the lawful flow of business; and, in addition, committed acts of violence and destruction of property, distributed circulars containing untruths and libelous statements, all being done for the purpose of injuring the business of the S. S. Kresge Company for the purpose of bringing pressure to bear and causing said company to coerce and intimidate the Mt. Clemens Pottery Company.

That is all. * * *

(A photostat was then marked as a copy of Defendants' Exhibit 84.)

(Inspection field Letter No. 27 of the Wage and Hour Division was then marked Defendants' Exhibit 113.)

Mr. Cooper: I offer in evidence, if the Court please, the document which has been marked as Exhibit 113, a copy of inspection field letter No. 27 of the Wage and Hour Division of the United States Department of Labor, bearing the notation on the bottom over the signature of L. Metcalf Walling, Administrator of the Wage and Hour Division, certifying it as a correct copy.

The Master: Show it to counsel.

(Exhibit handed to Mr. Lamb.)

Mr. Lamb: There is an objection to it, it being immaterial. * * *

The Master: Well, I think it is probably correct. I will admit the document, subject to checking, and if any error appears in it, why, it will be corrected, or if it is found there was no such letter ever issued, then it will be subject to being stricken from the record.

Mr. Cooper: And I offer in evidence, if the Court please, the document which has been marked for identification as Exhibit 64, and which was produced here in court in response to the court's direction that the plaintiff

Local 1083, United Pottery Workers of America, produce in court its constitution and by-laws, and particularly that portion of the exhibit—well, I am offering it all and directing particular attention to Article IV of the constitution.

Mr. Lamb: Objection.

The Master: Well, again, I will admit it in evidence subject to argument as to its legal effect.

Mr. Nunneley: Mr. Charles Doll, Jr.

CHARLES E. DOLL, JR., was recalled as a witness on behalf of the defendants, and being previously sworn, testified further as follows:

Re-Direct Examination

By Mr. Nunneley:

Q. (By Mr. Nunneley) Mr. Doll, did you regularly start the glost belt for production purposes before the established starting time in the morning?

A. No.

Q. Did anybody else regularly start the glost belt for production purposes before the established starting time in the morning?

A. No, sir.

Mr. Nunneley: Take the witness.

Re-Cross Examination

By Mr. Lamb:

Q. Didn't you stand at the end of the glost belt, Mr. Doll, and when the men had punched their time clocks and passed through, didn't you start the belt immediately 14 minutes of 7:00?

A. No, sir.

Q. Is that your sworn testimony?

A. Absolutely. • • •

Mr. Nunneley: If the Court please, subject—your Honor hasn't ruled yet on the matter of the booklets.

The Master: I don't know that I am going to rule on that at this time. I am going to think that over.

Mr. Nunneley: We might have to reopen the proofs, or open the proofs. That is the point in connection with that. If the ruling is such that we have to reopen, we don't want to be in a position of having rested our case.

The Master: You rest subject to that one question. If I decide you have to get those exhibits identified, why, you will have the opportunity to present the proofs on that. • • •

STEVE ANDERSON, was thereupon recalled as a witness on behalf of the Plaintiffs in rebuttal, and being previously duly sworn, testified further as follows:

Re-Direct Examination

By Mr. Lamb:

Q. Mr. Steve Anderson, you were sworn when you testified on direct examination here, were you not?

A. Yes.

Q. Mr. Anderson, have you seen Mr. Charles E. Doll, Junior, start the ghost belt before 7 o'clock?

Mr. Cooper: Objection.

A. No.

Mr. Nunneley: Object to that as not the proper method of redirect. • • •

The Master: I will get Mr. Anderson's testimony on it.

A. I have seen Mr. Doll standing there, but I have

never seen him start the belt. It most generally was started when I came in.

Q. (By Mr. Lamb) When you came in at 14 minutes of 7, the glost belt was already in operation?

A. Yes, sir.

Mr. Nunneley: We object to that as leading.

The Master: When was the glost belt started—or did you ever see the glost belt start?

A. No, I didn't see anybody actually start it, no. I seen the belt running.

The Master: What did you observe with respect to the glost belt?

A. I used to go right by the glost belt when I came in to work, and it was generally running.

Q. (By Mr. Lamb) And you came in at 14 or 13 minutes to 7 and found the glost belt running?

A. Yes.

Mr. Nunneley: Objection. It is leading.

The Master: That is leading.

Mr. Lamb: That is what he said.

The Master: He said when he came in he saw the glost belt running. You can ask him what time he came in.

Q. Okay, what time did you generally come in there?

A. Different times. Sometimes I came in at 31 or 32, like that; 6:31, 6:32. Then other mornings it would probably be 14 minutes to the hour, 12 minutes to the hour.

The Master: Was it running when you came in at 6:31 or 6:32?

A. Yes, on different occasions it was, yes.

The Master: Sometimes it was and sometimes it was not?

A. Well, I came in at different times. When I came in, it was most generally running.

The Master: And then other times it was not running?

A. Well, I don't know. I never noticed when it wasn't running.

Q. (By Mr. Lamb) Now, were you given instructions or advised as to whether or not you were given instructions to report and go to work prior to the so called 7 o'clock shift?

Mr. Nunneley: Now, we make the same objection. Are we going to reopen the whole subject? That's all matters of their main case. Are they going to be permitted to come into this court and put on proof by their witnesses and rest, and then start all over again and leave us that way?

The Master: Well, at the risk of reaffirming what he has already testified to, I will permit you to ask him, but don't ask it in a leading form. Ask what the instructions were.

Mr. Lamb: All right.

Q. (By Mr. Lamb) What were the instructions—

Mr. Nunneley: May we have an objection to it all?

The Master: Yes.

Q. (By Mr. Lamb) What were your instructions relative to punching in your time clock and going to work in the morning?

A. The foreman used to tell me to come in at a certain time and punch in and go right at work.

Q. And did you do that?

Mr. Cooper: Objection.

A. Yes.

The Master: Same ruling.

Q. Did the other employees of the Mt. Clemens Pottery Company—

Mr. Cooper: Object to it.

Q. (Continuing) —punch in and go directly to work?

Mr. Cooper: Same objection.

The Master: As far as you observed.

A. As far as I observed, they did, yes.

Q. And that is without reference to waiting until a subsequent so-called starting time of 7 o'clock?

Mr. Cooper: Objection to the form of that as leading.

The Master: That is leading. No question about it.

Mr. Lamb: All right.

Q. (By Mr. Lamb) Can you advise us whether or not the employees that you observed of the Mt. Clemens Pottery Company did proceed to work immediately after punching the time clock without waiting for the 7 o'clock shift?

Mr. Nunneley: They are just reopening the whole lawsuit again.

Mr. Cooper: Same objection.

The Master: That is a leading question. If you want to ask him what he observed with regard to employees going to work, all right.

Mr. Nunneley: That is simply reopening the whole case.

Q. (By Mr. Lamb) Can you tell us what you observed with reference to the other employees?

A. Well, I observed people punch in their clocks and went in and went to work, went right to work.

Q. Without waiting for the subsequent 7 o'clock time?

Mr. Cooper: Objection.

The Master: That is leading. I will sustain the objection.

Mr. Nunneley: Move it be stricken.

Q. (By Mr. Lamb) Tell us what you observed with reference to employees going to work without waiting for the 7 o'clock shift, for instance?

Mr. Cooper: Objection.

The Master: That is leading. I think your questions there almost all fall into the same leading category.

Q. Can you tell us what you observed with respect to their going to work, Mr. Anderson?

A. Well, there was no 7 o'clock as far as that goes. We went right in, went in and punched the clocks, and walked right in and went to work. We didn't wait for any whistle.

Mr. Cooper: Move that the answer be stricken as embracing conclusions and going way beyond matters of observation.

A. I said as far as I was concerned.

Q. And as far as you observed—

The Master: (Interposing). I will let it stand.

Q. —other employees, was that practice followed by other employees you observed?

Mr. Cooper: I object to that as leading, and simply suggesting the answer.

Q. Tell us what you observed with reference to whether employees, then, Mr. Anderson, in that respect?

A. Well, all the other employees—

Mr. Cooper: Objection unless he names the employees or gives us some idea who he is talking about.

The Master: What group of workers were you in a position to observe in the morning?

A. You mean the departments?

The Master: Yes.

A. The dipping house and glost belt.

The Master: Could you observe the time that all the others went to work, what they did, in the whole plant?

A. Well, the glost belt was generally working when we came in, and the dipping house I could see about all of them.

The Master: You mean at 14 minutes to 7 everybody in the glost belt department was working?

A. I don't know exactly 14 minutes to 7. On certain mornings it would probably be 14 minutes to 7, and other mornings, if they came in at 6:31, they would be working before 14 minutes to 7.

The Master: Were you in a position where you could observe the glost belt department as to the number or proportion of employees that were there, and what they were doing, and so forth?

A. Yes.

The Master: And what other departments could you observe?

A. The dipping house, brushing.

The Master: Was that your department?

A. And the chipping belt. I would go right by those departments.

The Master: Well, you may state what you observed.

Mr. Nunneley: Same objection, that it is improper rebuttal.

The Master: I will let him answer.

A. Well, lots of mornings I would see the fellows from the glost belt come back from unloading cars, with their cards in their pockets, and they would go up and punch the time clock and go back in again. And then—

Mr. Nunneley: I move it be stricken. Improper rebuttal, coming after the defendants' case.

The Master: I will take a recess right now and look up this question of the scope of rebuttal proof. • • •

The Master: Well, exercising my discretion—I think I have discretion on it—I will permit that question to be asked and answered by the witness.

Q. (By Mr. Lamb) Mr. Anderson, will you advise us what you observed with respect to other employees punching their time clock going to work?

Mr. Cooper: Same objection.

The Master: Same ruling. Answer.

A. Well, they punched their time clocks and went right in to work right away, started work.

The Master: And what employees, now, did you have the opportunity to observe?

A. Oh, employees on the glost belt, employees on the chipping belt, and employees in the brushing department, dipping department.

Q. (By Mr. Lamb) Bisque belt?

A. Yes. Most of the employees on the bisque belt.

Q. Mr. Anderson, did you ever take time to dawdle or delay between the time you punched the time clock and the time you went into production work?

Mr. Cooper: Objection. • • •

The Master: Well, I don't know. At the risk of reiteration, and that is the only risk involved, I will let him answer the question.

Mr. Lamb: What is your answer to the question, Mr. Anderson?

Mr. Nunneley: It is prejudicial to us to have the record figured up that way. That is all.

The Master: If he just says the same thing twice, once on direct and once on rebuttal, I don't see how it prejudices you particularly. You still have just the two different versions in the record. That is the most prejudice that could be involved in forbidding this, and it is a very slight prejudice, I would think.

A. I have forgotten what the question is.

The Master: The question is as to how you proceeded from the time clock to this department.

A. I punched the clock and hurried right in to work.

Q. (By Mr. Lamb) Did you delay, take any time off to dawdle or talk?

Mr. Cooper: Objection.

Q. Or smoke, or gossip, or anything else?

Mr. Cooper: Leading question.

A. No, I never did.

Mr. Cooper: I move the answer be stricken as purely leading.

The Master: I think it is all right. Overruled.

Mr. Lamb: That is all the rebuttal from this witness.

Re Cross Examination

By Mr. Nuttneley:

Q. Steve, you never passed the time of day with any of the boys as you went from the time clock to work, is that right?

A. No. We had plenty of time to do that in the bull pen.

Q. Before you got there. I did not ask you that. I said you never passed the time of day with any of the boys as you went from the time clock to work?

A. Oh, I probably generally walked along with somebody and talked, sure. It is natural.

The Master: Wouldn't you ever stop and somebody caught a big fish, and you caught one the day before, and say anything to them or discuss trivial matters of that sort.

A. No, I don't think I ever did.

The Master: Make a beeline right for the department as soon as you got in?

A. Yes. You wanted to be in there or the boss would want to know the reason why. • • •

FLOYD E. PEARL, was called as a witness on behalf of the plaintiffs, in rebuttal, and having been first duly sworn, testified as follows:

By Mr. Lamb:

Q. What is your residence address, Mr. Pearl?

A. 200 Hubbard Avenue, Mt. Clemens, Michigan.

Q. You were formerly an employee of the Mt. Clemens Pottery Company?

A. Yes, sir, I was.

Q. Can you tell us for how long?

A. 17 years.

Q. 17 years. Up to approximately what time?

A. November 21.

Q. 1941?

A. Yes, sir.

Q. That is when your employment was terminated?

A. That is right.

Q. Tell us whether or not it was terminated because you insisted on stopping work at 4 o'clock.

Mr. Cooper: Objection.

The Master: That is leading. You will have to ask why it was. • • •

The Master: You say you were discharged in November of 1941, if that is the date?

A. Yes, sir, November 21.

The Master: And were you given a reason by your superiors at the time you were discharged?

A. The one that was told to me—

The Master: Were you given a reason? Can you say? I just want to find out.

A. Well, he said I was all washed up, in other words, I didn't work there no more.

The Master: Did he tell you why?

A. Well, he mentioned I wouldn't work after four o'clock on Friday night, the night before.

The Master: The only way I can see this question might be material is that there is a question as to whether or not the employees ever made any complaints or acquiesced in the practices of the Mt. Clemens Pottery Company. Many of the plaintiffs have testified they didn't make any complaints about the manner of computing the time because they were afraid they would get fired. Now, in answer to that, you have produced some evidence to the effect that employees who complained about the practices never did get fired.

Mr. Nunneley: I think perhaps I know something about the circumstances. I know what this will all lead to because I have been through the mill in it before along with Mr. Pearl. And it will mean, of course, if we are going into the question of what happened on November 21, the whole string of proof, the whole long string of proof, along the line of our proving that, in the first place, that there is no question of the 40 hours involved in Mr. Pearl's case because, as a matter of fact, the request to work over and past 4 o'clock was a request to work past 4 o'clock, made on a Friday, when the pay week, as your Honor knows, starts on Wednesday. In addition to that, it was the day after Thanksgiving, on which they hadn't worked at all, so that there is no question of the 40 hours, under any computation or anybody's method of computation, there was no question of that involved here.

The Master: Well, can't you bring that out without going into that whole question?

Mr. Nunneley: I don't see how we can. We will be opening the door to the whole thing. We will just have to

try the whole thing all over again because we will have to bring out all those facts. • • •

Mr. Lamb: I don't care too much about proceeding with this line. I introduced this witness purely as rebuttal to a statement that was made.

The Master: It seems to me the facts that you have brought out are not disputed by him, Mr. Nunneley.

Mr. Nunneley: I don't know whether they are or not. There may be some more to it.

Mr. Lamb: Well, there won't be any more to it if I don't ask any more questions along that line.

The Master: All right.

Q. (By Mr. Lamb) Can you advise us whether you ever have observed Mr. Charles E. Doll, Jr., start the glost belt before 7 o'clock?

A. Yes, sir, always.

Mr. Nunneley: Now, if the Court please, we object to that as improper rebuttal.

Mr. Lamb: Mr. Charles E. Doll, Jr., said he didn't and this witness said he always did and he seen him do it.

The Master: I will make the same ruling as I did relative to Mr. Anderson. I am going to permit this testimony. • • •

A. Charles E. Doll, Jr., always started the belt before the first strike and he shut the belt off in the evenings.

Q. (By Mr. Lamb): And that was before 7 o'clock? That was the question.

A. Yes, sir.

Mr. Nunneley: I move to strike, as that is leading and suggestive.

The Master: At what time did he start the belt?

A. He started the belt in the morning in the year 1940 and part of '41, we used to have to go in at 6:30 in the morning and work until 16 minutes to 7:00 and then go out in front and wait around until 14 minutes to 7:00, punch our time card, and Mr. Doll would be standing on the end of the glost belt, and when he would see us coming in he would start the belt up, and by the time you got

there everything was working, right in front of us, and if we wouldn't run, why, he was standing right there and saying, "Come on and let's go."

Mr. Lamb: Let the record indicate the witness waved his arms when he said, copying Mr. Charles E. Doll, Jr.'s motion, "Come on, let's go."

Q. (By Mr. Lamb) Do I take it that you have worked in the morning between 6:31 and 6:46 before your time clock card was punched?

A. Yes, sir.

Mr. Nunneley: Improper rebuttal.

Mr. Cooper: Objection as leading.

The Master: It is all leading. • • •

Mr. Nunneley: Move it be stricken.

The Master: I will strike the answer and sustain the objection on the ground it was leading.

Q. (By Mr. Lamb) Can you advise us whether you ever worked before your time card was punched?

Mr. Nunneley: We object to it as being improper rebuttal, being matters entirely covered in the main case, or should have been, and is not now the time to bring it in here. • • •

The Master: I think I do. I think I will let him testify on it. I am exercising my discretion and permitting it.

A. Yes, sir, a good many times.

Q. (By Mr. Lamb) That was prior to April, 1941?

A. Yes, sir.

Q. Excuse me, I did not ask you what department you worked in, I think.

A. In the glost belt.

Q. Glost belt?

Mr. Nunneley: We have the objection to all the testimony of this witness.

The Master: I understand that.

Q. Now, Mr. Pearl, will you advise us the method by which you proceeded from the place where you punched the time clock to your activities, production activities?

Mr. Nunneley: Same objection.

The Master: Same ruling.

A. We would punch our card at 14 minutes to 7:00 and go directly right to our job, and by the time we got there the belt would be running, started by Charles Doll.

Q. Junior?

A. Junior.

Q. Did you ever take time out or delay between the time you punched the time clock and the time you went into production?

Mr. Cooper: Further objection as purely leading.

The Master: Sustained.

Mr. Nunneley: Not proper rebuttal.

Q. (By Mr. Lamb) Tell us the method by which you proceeded.

Mr. Cooper: Same objection.

Q. The speed with which you proceeded from the time clock card—from the time you punched the time clock card to your productive work.

Mr. Cooper: Same objection. If the Court please, asking a purely leading question which states an answer, and having it ruled out, and asking the same question over again I think is subject to the same objection as leading.

Mr. Lamb: The other objection was to the question I asked him whether or not he delayed or whether he ran.

The Master: How did you proceed? That was as little leading as it can be phrased.

A. Well, when we punched our card at 14 minutes to 7:00 we would have to run to get in there. If we didn't Charles Doll, Jr., would be standing on the end of the belt, and would be waving his hands for us to hurry up, "Come on, let's go." It would take us from the time clock to the glost belt would be about 200, 250 feet, and we would get up there and make it in about a half-minute and be on the job.

Q. Can you advise us whether there have been any strikes at the Mt. Clemens Pottery Company in the last month and a half?

Mr. Cooper: Objection.

The Master: Upon what ground do you object to that? That question was gone into.

Mr. Nunneley: It is all right with us.

Mr. Cooper: It goes 'way beyond any period we had, I think.

The Master: You asked him about strikes right down to the present time.

A. I know of three in the last month and a half, departmental walkouts caused by a cut in wages.

Mr. Cooper: Object to the last part of the answer and move it be stricken.

The Master: I will strike the last part. I have been avoiding the question of the cause of these strikes. • • •

Q. (By Mr. Lamb) Can you advise us whether your time clock was ever punched out at 3:29 in the afternoon and in at 3:31?

A. Yes, a good many times.

Q. Can you tell us the purpose of that?

Mr. Cooper: Objection. It calls for a conclusion.

Q. Or the occasion for that.

The Master: Well, what happened on that occasion?

A. Well, on that occasion it would be on Monday and Tuesday, because the end of the week would be on Tuesday night, and we would have an hour—it would make an hour over 40 hours. We would have to punch out at 3:29 and in again at 3:31. We would lose a half-hour that day Tuesday we would do the same thing again, so that we would lose one hour.

The Master: When was this done?

A. A good many times, in 1940, 1939 and 1941 we have done it already.

Q. (By Mr. Lamb) Which time clock did you use, the one at the north or the south?

A. South, the miscellaneous time clock.

Q. Tell us what you observed with references to the other employees punching the time clock and going immediately to production work.

Mr. Nunneley: We object, if the Court please; not proper rebuttal. • • •

The Master: He may answer.

Q. (By Mr. Lamb) Tell us your observation relative to what you saw other employees do with reference to punching the time clock and going into production work?

A. Well, they would punch their card and go directly to the job, because they would have to. The one I observed was on the glost belt. They would have to go directly to the job, because the belt was running and they was part of the production line and they would have to be there or the production shut down.

Q. Were you an hourly worker or piece-worker?

A. Piece-worker.

Q. You said you had worked there approximately 17 years?

A. About that, yes, sir.

Q. What kind of a title or what specific type of work did you do?

A. Glost unloading.

Mr. Lamb: That is all.

Cross Examination

By Mr. Nunneley:

Q. Mr. Pearl, you said there were three strikes at the Mt. Clemens Pottery in the last month?

A. I said departmental walkouts.

Q. Well, there wasn't any strikes, then?

A. Same thing.

Q. Same thing, walkouts and strikes are the same thing?

A. That is right.

Q. I see. Those are all matters which somebody has told you about, aren't they?

A. I got it pretty straight.

Q. I say, they are matters which somebody has told you about?

A. Yes, sir.

Q. You weren't present and saw any of them, were you?

A. I saw part of one, the first one.

Q. When was that? What was the date?

A. I can't tell you exactly the date, but I got home from work, and word was there for me to be at the pottery, and when I got there, they were just going back to work.

Q. They were just going back to work?

A. That is right.

Q. So that as a matter of fact all you know about whether there was any departmental walkouts at the Mt. Clemens Pottery in the last month is what somebody has told you; that is right, isn't it?

A. Yes, sir, what the department told me.

Mr. Nunneley: I move it all be stricken out.

The Master: It is hearsay. I will have to strike it.

Q. Now, Mr. Pearl, I will show you some papers that have been marked as Defendant's Exhibits 93 through 93-Y, and ask you if you know what those are?

A. These are the time cards.

Q. Whose?

A. Mine.

Q. Yours; all right. And now will you look them over and see if you can find one of those times when you punched out at 3:29 and in at 3:31 as you said a few minutes ago, will you, in the afternoon?

A. (Examining exhibits) That is not my card, I never used that (indicating).

The Master: Just for the record, to get this straight—

Mr. Nunneley (Interposing) They have already been offered and received in evidence.

The Master: The card he was referring to is Exhibit 93-Q.

A. There is none there that's got it. About all the cards, they ain't here that would be in there.

Q. (By Mr. Nunneley) If all the cards were here, they would be in there?

A. Yes, sir, but all the cards ain't here.

Mr. Nunneley: All right.

Q. (By Mr. Nunneley) At least none of the cards that are here, they didn't have it?

A. Naturally they wouldn't have them up here.

Mr. Nunneley: No, we wouldn't have them.

The Master: Let's see what you have up here.

Mr. Nunneley? We have all but the 41's. • • •

Q. (By Mr. Nunneley) Mr. Peark what makes you think that Exhibit 93-Q isn't yours?

A. I never punched a card only two times for two days, at no time while I was at the pottery. • • •

Mr. Nunneley: They have all been identified and received as I understand it, all of these.

The Master: I think they have, but apparently the date is either not marked on or—apparently what happened, the stamp for Floyd Pearl was put too high on the card for these two days, because, comparing it with the other stamps here, it would appear that the date would fall off the card on 93-P and 93-R. That is true of 93-R, I should say, but not of 93-P, because 93-P does not have a stamp, but simply "Floyd Pearl" written in in pencil.

That isn't your writing, is it, or is it?

A. I don't think so. I don't think I ever signed any cards unless I got it some time from Herman Miller, the watchman.

The Master: You can't tell whether it is your writing or not, your signature?

A. It looks something like my writing. It looks something like my writing. • • •

(Time clock cards of Floyd Pearl for 1939 and 1941 were marked Defendants' Exhibits 93-Z to 93-KK, inclusive.) • • •

Q. (By Mr. Nunneley) I show you Exhibits 93-Z, 93-AA, BB, CC, and DD, and ask you if those are some of your time cards for the dates that are on there?

A. Yes, but those dates—well, where is the rest of the cards? I said that was for them dates. Now, where is the rest of the cards?

Q. All right. Are there any of those cards which show that you punched out at 3:29 and in at 3:21 in the afternoon? • • •

A. Well, no, none of them cards.

Q. (By Mr. Nunneley) You did it during 1941 before

the first strike, didn't you?

Mr. Lamb: In the year 1941?

Mr. Nunneley: Before the first strike.

Mr. Lamb: During 1941?

The Master: 1941, yes.

Q. (By Mr. Nunneley) Before the first strike?

A. I wouldn't say for sure if they did or not.

Q. Well, I will show you the documents that are Exhibits 93-AA to 93-KK, and ask you if these are your time cards for the year 1941 up to the time of the first strike, being April 14, 1941?

A. Yes, sir.

Q. And you didn't do it during that period either, did you?

A. Not by the looks of them, no.

Q. You are vice president of the union, or were?

A. I was, and now I am president.

Q. Now you are president?

A. Yes, sir.

Mr. Nunneley: That is all.

The Master: Any more questions?

Re-Direct Examination

By Mr. Lamb:

Q. Have you seen the 1939 time clock cards, or what purported to be the 1939?

A. When he showed me part of them here, and the rest I didn't see, no.

Q. For July or August, 1939, have you seen any time clock cards?

A. No, sir.

Q. For April, 1939?

A. No, sir.

Q. Or February, 1939?

A. No, sir.

Q. Or January, 1939?

A. No, sir.

Q. Or December of 1938?

A. No, sir.

Mr. Nunneley: It is conceded that there aren't any cards in our possession for that time.

Q. Or November, 1938? Have you seen any time clock cards for that period, November, 1938?

A. No, sir, I didn't.

Mr. Lamb: That is all.

The Master: You are excused. • • •

CHARLES E. DOLL, SR., was thereupon recalled as a witness, being previously duly sworn, testified further as follows:

Re-Direct Examination

By Mr. Nunneley:

• • • •

Q. (By Mr. Nunneley) Mr. Doll, I show you these exhibits—I might as well have them all identified. It will be easier—Exhibits 93-EE, FF, GG, HH, II, JJ, KK. Whether or not those are time clock cards of Floyd Pearl for the period indicated thereon (handing exhibits to witness)?

A. Exhibits 93-EE to 93-KK, are the time clock cards of Floyd Pearl for the pays ending from January 14, 1941, to April 8, 1941.

The Master: Here are the others. I have sorted them out.

Q. And Exhibits 93-Z, 93-AA, BB, CC, and DD, whether or not they are the time clock cards of Floyd Pearl for the pay periods and the times indicated thereon?

A. Exhibits 93-Z to 93-DD are the time clock cards of Floyd Pearl for the pays ending November 14, 1939, to December 31, 1939.

Mr. Nunneley: We will offer the cards.

Mr. Lamb: Mr. Doll, do you have the cards for October, 1939, of Floyd Pearl?

A. We have previously testified that those cards are not available.

Mr. Lamb: I can't hear you.

A. I say we had previously advised you that those cards are not available. • • •

Mr. Lamb: Do you have the time clock cards of Floyd Pearl for the month of June and July of 1939?

A. We have not.

Mr. Lamb: Do you have any time cards for Floyd Pearl for the period from October 24, 1938, to June 1, 1938?

A. We do not.

Mr. Nunneley: That is all.

The Master: All right, you are excused.

(Witness excused.)

The Master: And these exhibits that have been offered under the general heading of Exhibit 93, will be admitted. • • •

Hearing on Exceptions to Master's Report, April 12, 1943

The Court: I don't expect to go into all of this, understand, but I would like to have in a general way what your objections are to the confirming of the report.

You can go right ahead.

Mr. Lamb: All right. The action, as your Honor will recall, was brought by the United Pottery Workers, CIO., and various employees named plaintiffs. The Court ordered that the action could proceed, but that there should be authorizations filed by individuals who sought to be represented by the named plaintiffs and the union.

Those authorizations, some 350 of them, were filed with the Clerk of this court.

We had considerable motions argued before your Honor as to the right of the Kresge Company to be dismissed as a defendant, and the Court denied that motion. Then, about a year ago the Court referred this to Mr. Quaife as a Special Master.

Mr. Quaife conducted hearings, and I think some 23 days of hearings were had, and some 3500 pages of transcript were taken. Then, the 1st of April, or middle of April, or March, Mr. Quaife made his report.

The Court: May I ask a question before you get into that? I have had so many of these I don't know whether this is the case I am thinking of or not.

Mr. Lamb: This is the case that has to do with the overtime.

The Court: Let me see if I remember it so that you will know whether or not I am on the right track.

Isn't this the case where it was claimed the workmen would get there at 7 o'clock, but they wouldn't get credit for being at work until 7:15, or 7:30?

Mr. Lamb: That is correct.

The Court: And then they would quit at 11:15, but they only got credit up to 11 o'clock? • • •

Mr. Lamb: That is the case: that the employees reported at 6:31 or 6:46 in the morning, and they were paid to the subsequent quarter hour, and then at noon they would go out at 11:14 and were paid to the preceding quarter hour, so that they were actually deprived of 56 minutes work time a day.

The Court: Almost an hour of time a day.

Mr. Lamb: Yes.

The Court: Now, may I ask this; was any testimony taken as to the length of time it took them to go from where they put their uniforms on—

Mr. Lamb: (Interposing) A great deal.

The Court: (Continuing) —whatever they had to put on?

Mr. Lamb: A great deal. The testimony is not disputed that the employees prepared themselves completely

for work prior to punching the time clock cards. There was testimony taken as to whether it was 200 feet or 100 feet to various work benches.

We held—and I ask the Court particularly to notice, that the decision which confirms our position, the Tennessee Coal & Iron case was decided after the Master's report, after the Master made his report, and that is a very important decision holding that the employee must be paid from portal to portal. • • •

The Circuit Court, the Fifth Circuit Court, held that these employees from the Tennessee Coal & Iron Company must be paid from portal to portal, and it is irrespective of how long it took to go from one work place to another; that that matter was in the direction and control of the employer, and the employer sent the employee to a particular work place around the premises.

And, the Court in that case confirmed a judgment of approximately $250,000 for those employees.

We have set that up, some references in that case, in our objections to the report.

The Court: All right, go ahead, now.

Mr. Lamb: Now, the time cards, it is undisputed in this case, are specific and show the time that the employees worked, with the exception that the Master holds that the time going to work from the time they punched the clocks is to be deducted, and the employees charged with the time and only given credit to the subsequent quarter hour; what he calls the starting time.

Now, the Master has given several findings of fact and several conclusions of law which are in direct conflict with that particular premise. He states that it will be a simple matter that if these time clock cards are accurately kept, that is, do reflect the time—page 54 of the Special Master's report—that in the case at bar that if the plaintiff's claims of 56 minutes extra work per day is well taken, the amount of time can be readily and precisely figured. The same is true if the contention that all of the punched time on the cards constituted employment time is correct. • • •

The Court: I know that. But, the main reason that

I sent this case down there was I couldn't believe that any company could do what is claimed they did in this case. It was just unbelievable to me. I can understand how, if it had to take them five to ten minutes to get dressed to get ready, that the company would make them get there in time. I can understand that. Because they are supposed to be ready to work. * * *

Mr. Nunneley: In view of the fact that we are just having an informal discussion we are not going to say very much now. After your Honor has read the record we will be very glad to argue the entire matter.

The Court: Briefly, what is your position?

Mr. Nunneley: Our position is that the facts do not bear out the assertions that Mr. Lamb has made here. He said we admit certain things, and I want to say right now that I don't know anything that has been admitted in this case by anybody, so that when he said we have admitted it, I don't know of a thing, and our contention is, to start with, that the facts do not bear out his assertions.

Your Honor has asked about the matter of the time, for instance. Let us say by way of illustration that the starting time of a given department in that plant is 7 o'clock in the morning. The people are not permitted to come by the time clock until 14 minutes to 7. That is where the 14 minutes come in. Nobody can come in before 14 minutes to 7. They are expected to be at their places and ready for work at 7 o'clock. That is the thing that is in this case.

There is no other method by which it could be done, probably, and have been there, excepting to get some of them prior to the actual starting time to go by the clock, because they can't go by the clock at one time.

The Court: They could come in at 5 minutes to, if they want to.

Mr. Nunneley: Correct. They could come in at 5 minutes to; they could come in at 1 minute to, if they could get to where they had to work, and they wouldn't be penalized for it, or anything.

The Court: What hours did the time clocks bear? What minutes do they bear?

Mr. Nunneley: The time clock bears the minute the man came by the clock.

The Court: Is it true that they all bear the time of 14 minutes to?

Mr. Nunneley: No, your Honor, that is not true. • • •

Mr. Lamb: The time clock cards of all of them are in evidence, and available.

The Court: They are available?

Mr. Lamb: Yes, your Honor.

The Court: Who has got those?

Master Quaife: I have all of them that are in evidence, your Honor please. • • •

The Court: So far as that part of the case goes, if this Court was convinced they had to report at this hour of the morning, 14 minutes to 7, and had to punch their time, their clock, at that time, or as soon after that as they got in line, the Court is very apt—I have not looked at the law, mind you—I would be very much inclined to hold the Kresge Company or Pottery Company liable. • • •

Hearing on Exceptions to Master's Report, June 8, 1943

The Court: I haven't made up my mind, but one of the things that impressed me in this case was this; here is a fellow who gets there at 14 minutes to, let us say. Probably he went over and changed his clothes, and then he did some little odd things, and then he walked to his place in the plant. Going from the time clock to his place in the plant is something like this portal to portal business that we read about. But, even in the portal to portal case, the Coal Mine case, they didn't permit him to recover for the time of changing his clothes and getting his tools, as I remember. Isn't that true?

Mr. Lamb: That is true.

The Court: Of course, now, I have thought this, that if I can ready home and get on the job, and do all the necessary work that I have to home, that is as far as getting my clothes ready, that when I got there I should be ready to work and I should be credited from that minute on.

But, if the company said to me, "You come there and change your clothes before you start work," that if they made me change my clothes there I was under the impression they should pay for that.

Of Course, that didn't amount to anything. It amounted to two or three minutes, or four minutes. And, I want to know what difference that would make, if any.

Here is another question. It wasn't argued very strenuously by the defendant. When they quit at 12 o'clock—I take the arbitrary hour of 12 o'clock—and then they punched out at, well, long enough for them to walk over there, I didn't see any evidence in there at all, Mr. Lamb, or any argument on your part, that they were working until 12:14 and then punching out and only credited until 12 o'clock. I didn't see any argument or any evidence to that effect at all.

So, for example, here is what happened, as I remember it—and, if I am not right on that I want you to put me right, and I am telling you these things before you argue so that you will know some of the things I have in mind—I noticed two or three cases there where the person quit or punched out at noon, or let's say at 12:08, and on cross-examination it developed that they quit at the whistle but they saw there would be a line-up in front of the clock, and instead of punching the clock at that time they would do something else; wash their face, or something else, or get their lunch, preparatory to punching out.

Isn't that true?

I mean, they didn't actually work until 12 or 12:10, or 12:15, but they would work until 12 o'clock and then something would consume their time until, perhaps, 12:08 or 12:10, or 12:14.

I want you to discuss that. Because, if this Court should decide for example, that the company should be entitled to not more than three to five minutes—I have just thought about that—in the moning, from three to five minutes before they went to work, at any time that they had to punch the clock before that time, that should go to them, and any time after five minutes at the close of the day I would wonder what difference, if any, that would make in their pay. • • •

Mr. Lamb: You stated this was an important case. Certainly the parties and I am convinced that this is the most important case that is pending under the Wage and Hour law in the United States today. We often think in this particular time of John L. Lewis' struggle on his portal to portal issue, and wonder whether it is purely political squabbling, or whether it is actually a grievance.

I am using him as an authority against our position, because it was a letter of the general counsel of the mine workers which largely gummed up this whole portal to portal issue, as the court noticed in the Tennessee Coal & Iron dissenting opinion. They relied very largely on the opinion of the general counsel of the mine workers on that portal to portal issue, but it has assumed a great importance to the men in industry. But, we have attempted to solve what appears today to be a very aggravated labor situation at Mt. Clemens in the state of Michigan in the orderly process of this court, and to determine this issue as to what constitutes working time in this orderly judicial fashion.

I think this issue here did get somewhat confused. I don't think purposely confused, or lawyers' confusion, but I say the very nature, the vastness of this case, did lend a certain confusion to a very simple issue as to what constituted working time.

The court raised the question, or stated that it had in its mind a question as to whether or not the imposition of a three-minute rule, or a five-minute rule, wouldn't be a proper one. To me it is necessary for these employees, in order to prevail, to prove working time. We have the burden of establishing that. And, it has been

our position that working time was that time where the employee was on the employer's premises at the employers request or sufferance.

The Court: Have you got any case on that at all?

Mr. Lamb: Yes, we have a great many cases on that, and I would like, first, to use the Administrator's rulings on that, because, as the court said in the American Trucking Association case, that those who are charged with the administration of an act, their opinions are, of course, entitled to great weight.

Now, what did the Administrator say here?

He has adopted interpretive bulletins. We had the Administrator's highest official here testifying in this case specifically about this plant, and he was asked the question—first he stated he had had this conference with this management, and he stated that he informed Mr. Doll, the president of this company, that time spent on the premises by any employees who were required to be there by the company was to be considered as hours worked regardless of whether they worked or not.

Then this question appears in the transcript. I asked him:

> "Did you instruct Mr. Doll that by virtue of Section 3 (G) of the Act that if employees were instructed to ring their time cards prior to starting time that any time hereafter would be considered working time and must be so computed?
>
> "A. Yes. They were to be considered as working beyond any time which they were required to punch, or to be on the premises."

The Court: Who said that?

Mr. Lamb: Mr. Rifkin, the Regional Director of the Wage and Hour Division.

The Court: Now, wait a minute. Let us analyze that.

Mr. Lamb: That is exactly—

The Court (Interposing): Do you mean to tell me Rifkin, or anybody else, can lay down a rule that says if I open a time clock here for you to be here at 14 minutes to 7, and you come at 14 minutes to 7, you can go

over and sit in the corner and draw pay from 14 minutes to 7 although the rest of the crew doesn't get there until 7 o'clock?

Mr. Lamb: Yes, your Honor.

The Court: Well, if that is the rule I take issue. There has got to be a time for these men to punch the clock.

Mr. Lamb: If the employer instructs that employee to be there at 14 minutes or 8 minutes to 7, even though some other employee does not report until 7, of course that employee is entitled to pay. That is the question of if he is instructed to be there at that time.

Then I will show with reference to the transcript of this case where the employer instructed these employees to be there at that particular moment.

The Court: Now, wait a moment.

Mr. Lamb: It isn't so absurd, your Honor.

The Court: I have 5,000 men working. They have got to come through that door. I say, "Be here ready to work at 9 o'clock," and every one of them is here ready to work at 9 o'clock.

Mr. Lamb: They should be paid from 9 o'clock.

The Court: But, he can't get in the door.

Mr. Lamb: That is right.

The Court: He can't get in the door until 10 o'clock, the last man gets through. Do I pay him from 10 o'clock?

Mr. Lamb: If he is instructed to be on the employer's premises at 9 o'clock, he should be paid from 9 o'clock. There is nothing absurd about that.

The Court: Isn't the testimony here—and if it isn't I want to be corrected. This is my impression of the testimony, that they said the clock would be open for punching at 14 minutes to.

Mr. Lamb: Your Honor, that is exactly the issue.

The Court: All right, now, I want to get that. I want the reference—I got it right here—to any testimony that is worth anything, that the men had to be there at 14 minutes to 9 or 14 minutes to 7, whatever the time was.

* * *

The Court: Is there anything unreasonable in my saying to you, five of us are going to be on this job tomorrow, to make sure that you who are lazy and don't get around the way you should you—I wouldn't say that actually, I am just supposing that—I say, "All right, we will all be here at 6:45, or 6:50, so that we are all ready to go to work at 7 o'clock."

Now, isn't that in the interest of labor itself and the four individuals as against the one?

Mr. Lamb: It isn't in the interest of anyone, your Honor. It isn't even what occurs actually, to tell the man to be in the plant at 6:30 and mean that he should be there at 7. Labor can't ask that.

The Court: I mean if it was that extreme I would say no. All right—

Mr. Lamb (Interposing): If the employer instructs an employee to be on the premises—

The Court (Interposing): I looked for this thing, and I am frank to say that I can't see in here where they were told you had to be there at 14 minutes earlier, and I don't see how they all could have punched 14 minutes early because it took them three or four minutes to go through, nor where they ever fired anybody except possibly this one girl, and that is denied, for not being there on time. • • •

The Court (Interposing): I have interrupted you most of the time. I will tell you why, because I have gone through most of this looking for this testimony that these people started at 14 minutes to. Now, they didn't start at 14 minutes to. I can't find any instance where they started before 7 o'clock.

And, the claim of the plaintiff seems to be that because their boss said, "Be here 14 minutes early," by which he meant, according to the testimony, that the time clock would be opened at 14 minutes to, you will have 14 minutes to get ready, the whole bunch of you, that for that reason these men now claim they should be paid from the time that they punched the clock, knowing they didn't go to work until 7 o'clock. That is in there, too. I went through that testimony. • • •

Mr. Cooper: The claim of 14 minutes, four times a day, as the Court has observed from looking at the transcript, was narrowed down to a claim of 14 minutes in the morning when it came to the testimony, and it was with respect to that one 14-minute period before work started in the morning, and, typically, the period from 14 minutes to 7 o'clock, that practically all the testimony was about. * * *

Only 25 persons can get through the time clock within the space of a minute, and the testimony discloses that there were these two time clocks—

The Court (Interposing): 25 in a minute?

Mr. Cooper: Yes, your Honor. There is testimony of three witnesses that we produced to that effect. The only contrary testimony was one of the plaintiffs, Mr. Larimer, who said they couldn't get through that fast. He put it something like 20 in a minute.

We have these two time clocks, your Honor—

The Court (Interposing): That would be five minutes, with two time clocks, for the 1,000 men to go through.

Mr. Cooper: That isn't—your mathematics are entirely correct, your Honor, but because of the fact there were different shifts, some in the afternoon and some in the morning; some 6 o'clock shifts and some 7 o'clock shifts, so that it broke down to this, that there were a little more than 200 employees going through each of these two time clocks during the period between 14 minutes to 7 and 7 o'clock.

The Court: That ought to take about two minutes.

Mr. Cooper: And it would take about between 8 or 9 minutes to get the entire group through the time clock.

* * *

The Court: Oh, wait a minute. That is right. It would take 4 minutes for 100. Yes, sure. Sure.

Mr. Cooper: And, in that same connection, if I may hand to the court three particular exhibits numbered 97 through 99, which were prepared by picking out three days, one at the very beginning of the period involved in the lawsuit, and one right in the middle, as close as you could hit the middle, and still get a day at the top of

the time clock card, and one at the end of the period involved—may I hand this to your Honor?

The Court: Yes.

Mr. Cooper: It will explain itself better than I can explain it (handing exhibits to the court).

It shows the number of individuals who punched through the time clock at every minute from 14 minutes to 7 right up until 7 o'clock, and each line represents one individual checking through. The three cards show about a uniform pattern.

There is a period from 7 to 9 minutes when the employees pass through at an almost uniform rate, and then when you get up to about 6 minutes to the hour, 5 or 6 minutes to the hour, the great bulk of the employees have passed the time clock, but not until then. And then there is a scattered dribbling of employees ringing through the time clock between 5 minutes to the hour and the even hour.

The time clock cards, we think, demonstrate that there was no—

The Court (Interposing): Wait until I take a look at this.

Mr. Cooper: Yes, your Honor.

The Court: Doesn't this bear out their statement? Here are 27, 25, 24, 27, 25, 29, in the first five minutes. That makes 175, at least. About 180. 180 or 160 in the first five minutes out of 218. All of them, practically all of them were in there five minutes before, anyway.

Mr. Cooper: That is correct, by 5 minutes to the hour most all of them are in there.

The Court: Why would that be?

Mr. Cooper: I beg your pardon?

The Court: Why would that be? Why is that necessary?

Mr. Cooper: There are a number of reasons for it. One is the circumstance that a good number of the employees would figure on getting there around about a quarter to 7 if they were going to start at 7 o'clock. Many of them

lived long distances from the plant, and they would come driving up, and if everything went well they would get there early in the morning, and they would sit outdoors in the summer, and indoors in the wintertime, until the time clock gards were opened, and then they would start passing through the time clocks.

And, you find, if you check any particular man, that sometimes he will be up in the forepart of the procession, and then you go into the other times and you will go along and he will not even punch through the time clock until about five minutes to the hour.

Take a case of a man who punches through the time clock at five minutes to the hour. You asked me why they were all through by 5. Then you have to add to that the time that it would take him to walk to his apartment.

The Court: Well, now, what was the furthest that anybody had to walk?

Mr. Cooper: It was between 900 and 1,000 feet.

The Court: Three blocks, or one block? No, that is three blocks.

Mr. Cooper: The plant is just less than a quarter of a mile long, your Honor, and that is the clay shop. Mr. Metz in the clay shop was asked what time production would start if the last man in his group of three punched the time clock at 4 or 5 minutes to 7, and he said if the last man in our group punched the time clock at 4 or 5 minutes to 7 it would be after 7 before we actually started production. • • •

We have been speculating some this afternoon, if the Court please, whether there was any possibility any employee might have done some work before the regular starting time on any day. Without taking up your Honor's time on it I want to suggest what we tried to get into in detail in our brief. In fact, we spent about ten pages on it, starting at page 191, what the plaintiffs must prove is that some work was done by a particular plaintiff. In other words, there has to be proof of damages. And that where it is impossible to determine whether or

not any individual started work a minute or two minutes on some days before time, a minute or two after starting time on other days, why, then, because of the uncertainty of the evidence there could be no recovery. • • •

Mr. Cooper: And, my point is that unless the plaintiffs by their testimony in this case have proved that they did work before 7 o'clock, that there could be no recovery.

The Court: That is the only thing that is bothering me a great deal in this case, I will tell you that. • • •

Hearing on Motions for Findings, Etc.
Sept. 13, 1943

Mr. Lamb: Of course, I don't think your Honor held that these people are not entitled to pay prior to a regular starting time. Your opinion indicated the practice and said that there has been an obvious attempt on the part of the company to circumvent the Fair Labor Standards Act.

The Court: Well, I don't know who it was, but one of those foremen, he would tell them to get there. There isn't any question but what he would, in my opinion, when they started at 7 o'clock, he would say get there quarter of seven. But they didn't get there a quarter of seven, they didn't get there 14 minutes to 7, they didn't get there 5 minutes to 7. Some of them got there as late as one minute to 7, yet none of them was fired.

Now, it is fair, when people are on piecework, to get them to report at work to punch a clock in time so that they don't upset everybody else's work. • • •

Mr. Lamb: The "regular starting time" is the thing I have objection to, because that assumes they established a regular starting time out there, and the Court finds in its opinion that they started, when they were told to report at 7, they knew they were to report there at 6:46. We discussed that.

The Court: Now, wait a minute. There was sort of a general understanding that whenever they started at seven, that the clocks were open at quarter of seven. And I guess the foreman did say, "Be here a quarter of seven." • • •

Mr. Cooper: The phrase, "regular starting time," was used by the Master in his report, and I am not sure whether your Honor used it in his opinion, but I am sure nothing in your opinion is inconsistent with that language.

Mr. Lamb: Here is the reference to what the Court meant by "starting time" (handing a document to the Court).

The Court: I don't see that it makes any difference.

Mr. Nunneley: I believe the findings should be clear, so that when the computation has to be made, we want to know what time to start figuring from.

The Court: What I am talking about is when they said they were going to start at 7 o'clock, that they got them in there 14 minutes or 15 minutes before time, that they were entitled to get them in there so that the straggler wasn't going to hold up the rest of them. Now, that is one of the main things, so that the rest of them could punch the clock. They had two clocks, didn't they?

Mr. Cooper: Yes, your Honor.

Mr. Nunneley: Two at first, and three later. • • •

The Court: Now, even when they said "be there at 6:45," the time set for starting work was 7 o'clock. You didn't claim any differently?

Mr. Lamb: We claim that they started work the minute that they arrived, your Honor.

The Court: There isn't one bit of proof to that effect.

Mr. Lamb: But your findings, the Court's opinion, your Honor—

The Court: Well, I will change the opinion if I have worded it that way, because there is no proof to that effect at all. As a matter of fact, you have told me you were going to be able to prove these men came in there at 14 minutes to 7 o'clock, they all got in, and if they didn't get there, they were fired; that they quit at 14

minutes after 12 and were only paid to 12. There isn't one word in there to that effect.

Then you told me that they came back at 14 minutes to one, let us say, and did not get paid until one o'clock. Now, there is no evidence of that in there.

Mr. Lamb: They have got thousands of time cards in the record, your Honor, and every one of them—

The Court: The time cards don't make any difference. Now, I know what went on out there. I do think that if they got down there, the bunch of them, being on piece work, that they jumped the gun, and I do think that the people were as much a party to it as the management. The management encouraged it; and I would like to penalize the management for doing it. But I have got to go on your proof. Now, if there is going to be any question about this thing, I will leave it in there, "starting time."

Mr. Nunneley: We believe it should be "regular starting time."

The Court: Well, all right, leave it as it is, because I am not going to let you maneuver me into that position.

Mr. Lamb: I am simply urging that we make this clear, so that there won't be any dispute. There isn't any way of eliminating a dispute unless we follow the Court's opinion.

The Court: That is just exactly what I am going to do. I will sign that just exactly as they prepared it. "Regular starting time." You can understand English. You told me you were going to do a lot of things, and I said if that is so, I would give them something they would wish they had never got. You didn't prove it, and it isn't my fault.

What else have you got?

Mr. Lamb: Your Honor, may I be heard on this now?

The Court: Not now. I have listened to this case for two years.

Mr. Lamb: I have worked on it three years.

The Court: I go out of my way to try to give you a little time, on testimony that wasn't worth a continental. . . .

Mr. Lamb: May I simply ask the Court one additional thing, if I may?

The Court: You may go before the Master and take additional testimony, and I will decide what if any fees you are entitled to. • • • •

Mr. Cooper: Your Honor please, there is one other matter I would like to bring to your Honor's attention, which is before the Court on one of our motions this morning and has not as yet been ruled on, either by the Master or by the Court.

We raised the defense in the pleadings, that if the plaintiffs prevailed and there was any recovery for the plaintiffs, there should be offset against the amount of recovery due plaintiffs, the extra compensation or bonus which was paid them by the defendant.

The Master stated that as one of the defenses, and stated in view of his ruling it would be unnecessary to consider it.

The Court: I think you better figure it both ways, what it would be with that offset and without, and the Court will decide that question later on. I can't decide that question now. • • •

Mr. Cooper: There remains before your Honor one motion for findings of fact and conclusions of law, some of which are inconsistent with the Court's opinion, some of which cover matters like this set-off business, that we haven't argued. So that our record will be clear, is that motion being held open?

The Court: I suppose so. I don't want to decide that other motion, because I don't know anything about it.

Mr. Lamb: Would your Honor also clarify the status of the motion which we filed, in which we followed the opinion of the Court?

The Court: I deny you followed the opinion of the Court, and I deny the motion. • • •

Hearings on Motions to Amend Findings, etc.
Jan. 4, 1944

The Court: All right. Anderson vs. Mt. Clemens Pottery.

Mr. Cooper: If the Court please, the case is now—

The Court (Interposing): Before you get into that, there are certain questions I want to ask you and which I would probably interrupt to ask you anyway.

On page 1 of your brief, one of the defenses raised in your answer was that employees had been paid extra compensation each year. Was that defense originally raised?

Mr. Cooper: Yes, your Honor.

The Court: Wasn't there something to the effect that that was an afterthought here? Didn't you make that claim, or did you, Mr. Lamb?

Mr. Lamb: I do not think so, your Honor.

The Court: All right. I remember there was something about an after-thought. Do you remember that, in an argument?

Mr. Nunneley: In the brief that Mr. Lamb just gave us he said that it was an after-thought, but it wasn't.

The Court: That is what I thought. You claimed that at one time?

Mr. Lamb: Well, we certainly claimed that the notion of setting off these voluntary payments was something that arose afterwards as a defense to this lawsuit. It was given as a gift or bonus at the time, and several years later they decided that it was so-called "extra compensation." • • •

The Court: Let's discuss first the question of setting off this extra payment, as you refer to it, extra compensation, against what they might be entitled to, and the

Court has held they are entitled to, by virtue of the formula set out by the Court. Now, let's discuss that.

• • •

The Court: I can see where, at the end of the year especially, when that Act first went into effect, in order to play safe some employer might have gone to his men and said, "Well, now, here, I am paying you 2 per cent more on everything you earned, and if there is any legal responsibility on me because of this Act that I do not quite understand, or do not appreciate, or do not know about, I want that to apply on any extra work, extra pay that you are entitled to."

I think any court in the world would uphold the finding that the man was perfectly justified in that. But if he said, "Now, this is a little bonus for you"—he did not call it a bonus—"extra compensation," but all the time he was depriving this man of his rightful earnings, I do not mean intentionally, but he was depriving him of his rightful earnings, and then when the man catches up with him after a while, he says, "I paid you all you are entitled to"—that was a Christmas present, that was a 4th of July present, or that was just to keep him working the next six months the way he had the last six months. Can he come now and say that you can figure that against it? • • •

Mr. Lamb: I wanted to simply suggest, too, that the other judges of that district did then decide similar to Judge Freed's decision, and Judge Jones later wrote an opinion for all of them to that effect.

I simply point that out because I appreciate there may be a strike against us here. I have appreciated that we have had a long, up-hill battle in this Mt. Clemens case. They have whittled off one claim, they have whittled off another, and we are now at the point, however—

The Court (Interposing): The Master whittled them all off. I gave you some life on very meager testimony, but nevertheless there was testimony in your favor, and

I felt that what you claimed happened, did happen, to some extent, not, however, to the extent that you people claimed. There was no evidence at all about keeping them fifteen minutes after the noon hour and fifteen minutes after the afternoon hour at all. • • •

The Court (Interposing): I agree with you, and they agree with you on all of that, that there wasn't any agreement.

Mr. Lamb: That is right.

The Court: That arbitrarily at the end of every six months they took 2 per cent of the wage and gave it to them as extra compensation. There isn't any doubt about that, but they say that no matter how they did it, that whatever amount they gave to these men can be offset against any amount that the man was legally entitled to, and Judge Lederle in his case says that they are right, and four or five others say they are right—no use spending time on facts that are not disputed.

Now, give me a little law, that is what I am looking for, because the Court has never felt that they should offset any bonus against these wages, and I have said so time and time again, but unfortunately if I am confronted with so much authority that I—well, I have no alternative—what am I going to do? I am not going to start manufacturing law of my own when judges all over the country say I am wrong, and there is some merit to their position. Do not argue the facts; they are not in dispute. • • •

The Court (Interposing): This is not vacation pay, it is extra compensation. Now, that is the point that you have got to bear in mind, and all the evidence shows that it is extra compensation and not vacation pay. As a matter of fact, some of the men did not take vacations, and they got their bonus on the 26 weeks, or the 52 weeks.

Mr. Lamb: This is a payment in lieu of vacation.

The Court: Now, wait a minute. Do not put evidence in here; that is not in there; there isn't one bit of evidence that this was in lieu of vacation. If there had been

you would have a different problem. There isn't one bit of evidence on that. The evidence is that they figured up what they had earned in six months and gave them 2 per cent on it. If they had six months or four months of vacation, it was all the same. Am I wrong on that? Isn't that true?

Mr. Nunneley: Your Honor is correct. • • •

The Court: The Hutchinson vs. Berry—the McMillan case; do you know whether that was vacation pay or not?

Mr. Cooper: If your Honor please, if I may borrow Mr. Lamb's book for a moment; the point of that opinion, I submit to the Court, is that the payment which was made in that case could not under the evidence be treated as a bonus. In other words, in that case it was not a bonus or extra compensation, because the Court says that as to defendant's claim of offset to treat this as a bonus may not be done.

The Court: He does not say that; now, read it. I will tell you what he says. The Court says if they had treated it as a bonus they would be in a worse hole than otherwise, so you cannot assume—read it..

Mr. Cooper: That is correct, and they added something, to treat this as a bonus or increased compensation would increase the hourly rate overtime pay and penalty.

The Court: So they could have got a bigger kick than this way—do not fool me on that one.

Mr. Cooper: I have not finished, your Honor.

The Court: All right.

Mr. Cooper: The defendant cannot be deemed to have so intended. To credit defendant with this sum on account of unpaid overtime is inconsistent with its stand in this litigation.

The Court: Yes. The logical result is to infer that the employer intended it as a gratuity, and it had been so treated. Of course, you come out with a statement that a corporation cannot give any gifts. I don't know. If there were no cases at all on this thing, I would not hesitate a minute, but I do have to give due respect to the

opinion of my colleagues and to other courts. A judge cannot figure that he knows it all, and there is some merit, there is merit where a company tries to defend itself, but for a company to pose as a very generous organization and say, "I am paying you something extra," and the poor fellow that is working for them does not find out until a year or so later that all he got paid for was what he was entitled to, and then have the company come in and say, "Well, maybe you are right, but you are not going to get any gratuity."

That does not seem right to me, and yet they could have protected themselves.

The only cases on this point that I can see so far is your case, and that is against the plaintiff in this case; there isn't any question about that. • • •

The Court (Interposing): Do not write any brief, because, gentlemen, there is no use of writing briefs. I want to read some of these cases. As I have told you, too, Mr. Nunneley, I am not sympathetic with the position of the defendant. I have been very frank. After all, however, I do not write the law; I have got to interpret it, at least if there are precedents I have to follow them, and I cannot let my own personal idea about giving a fellow a gift, and then only giving him something that he is entitled to, sway me here.

If you have any other cases on that point, give them to me in a week, and you may come across some others. Your only case right in point, however, is the Judge Lederle case, don't you think so?

Mr. Cooper: That, I think, is the only one on all fours, your Honor.

The Court: And that is on all fours, no question about it. • • •

Hearings on Motions for Judgment, etc.
June 12, 1944

The Court: All right, gentlemen. Now, what is the first issue here today?

Mr. Lamb: I think the first issue, your Honor, is to consider an order reducing the opinion of the Court rendered on March 3 to a judgment.

The reason for the delay in that I think is due largely to my own unfamiliarity with the rules, and no order was submitted. Then, two weeks after the decision was rendered herein, on March 3, the United States Supreme Court decided the so-called portal to portal case of the Tennessee Coal and Iron Corporation, that defined the term "work."

Then the practical problem arose in submitting an order to your Honor, whether in view of the portal to portal decision of the United States Supreme Court, the Court still wished to adopt the formula incorporated in its opinion, of pay for more than seven minutes in the morning and five minutes in the afternoon, or whether the Court would adopt the rule that all time on the employer's premises under the employer's directions was compensable time in view of the Tennessee Coal and Iron decision.

Not knowing how the Court would rule on that question—

The Court: (Interposing) Do you think that case applies here, the portal to portal pay?

Mr. Lamb: Well, I do, yes, your Honor; in this, that certainly these employees, after they punch the time card, are certainly under the direction of the employer. He may send them to one machine or send them to another; he may give them one assignment or another.

And that is exactly what the United States Supreme Court said in that case, that every second on the employer's premises need not be productive effort, but that if

the employee is on the premises under the direction and control of the employer, then certainly the employee must be paid for it.

The Court: How about if he quits at twelve o'clock—the whistle blows at twelve o'clock, he quits working, does he get paid for the minute or two it takes him to get off the premises?

Mr. Lamb: I would say yes, because the distance from the time clock is fixed by the employer.

The Court: Have you got to have an electric time clock at each bench?

Mr. Lamb: It takes 40 or 50 minutes for these miners to go underground.

The Court: Oh, the miners are different. They have to walk a mile sometimes before they get to work, or probably two miles.

Mr. Lamb: Sometimes three or four miles.

The Court: I might, if I had to say it over again, say five minutes instead of seven, but I am not going to. I think that I hit upon the only reasonable solution in this case that I could, after the Special Master had said that you were not entitled to anything. I felt that you were and gave it to you.

But I know this, that unless the time has arrived where the minute the fellow gets into the gate, automatically a clock—just like you have seen these electric rays, that when you go to step in front of a door, it opens a door—you have seen those doors, haven't you?

Mr. Lamb: Yes.

The Court: Now, unless we have come to the point where the minute the man walks on the premises that it registers, we are going to have an awful time trying to pay him for every second that he is under the employer's jurisdiction.

Now, I think that where they have to come there and spend ten or fifteen minutes every morning before they can get to work, that is one thing. I think I said that in my opinion, or words to that effect, didn't I, Mr. Nunneley?

Mr. Nunneley: Something like that.

The Court: Well, here he comes in and he punches the time clock. If the fellow out in front, the fellow that is first in there, if he stalls, as they very often do, he gets paid his time, and the man at the end, who can't get through, is serving as much as the fellow out in front, and it took him four minutes to go through that time clock, didn't it, in this case?

Mr. Nunneley: We claimed around eight.

The Court: Oh, no, not to get through the time clock. No, gentlemen, you showed me, as I remember, four to five minutes that they went through the different time clocks.

Mr. Lamb: We thought it was less than that, but there were different opinions on it.

The Court: Then what does he do, reaches over here and grabs a couple gloves? How many seconds went by? Why, if you get to that point, they will have to quit two minutes to 12; there would have to be a preliminary whistle at two minutes to twelve so that they can be off the property at twelve o'clock.

Now, have we reached such a status in our life that everybody has got to become a clock watcher? Have you watched the clock on this case? Do I watch the clock here?

EXHIBITS

(Incorporating Appellant's Designation of Exhibits)

Exhibit 1 (1A-1MM)

Tr. 79; R. 408

Time Clock Cards of Steve Anderson.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 2 (2A-2C)

Tr. 84, 3059; R. 408, 1300

Steve Anderson's Annual Earnings Records.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 3 (3A-3MM)

Tr. 138; R. 425

Time Clock Cards of Earl Trombley.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 4 (4A-4I)

Tr. 174; R. 435

Pay Stubs Attached to Checks Issued to Earl Trombley.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 5 (5A-5MM)

Tr. 3059; R. 1300

Time Clock Cards of Rita Schultz.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 6 (6A-6C)

Tr. 3060, 3070; R. 1300

Earl Trombley's Annual Earnings Record.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 7

Tr. 3060; R. 1300

Time Clock Card of Lillian Socia for Pay Period Ending October 29, 1940.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 8

Tr. 3060; R. 1300

Time Clock Card of Leo Stafford for Pay Period Ending October 29, 1940.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 9

Tr. 3060; R. 1300

Time Clock Card of Arthur Baxter for Pay Period Ending February 25, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 10

Tr. 3061; R. 1300

Time Clock Card of Clarence Burgess for Pay Period Ending February 25, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 11

Tr. 3061; R. 1300

Time Clock Card of Nelson Luchtman for Pay Period Ending February 25, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 12

Tr. 3061; R. 1300

Time Clock Card of Catherine May for Pay Period Ending February 25, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 13

Tr. 3061; R. 1300

Time Clock Card of Luella Rohrbeck for Pay Period Ending February 25, 1941.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 14

Tr. 3061; R. 1300

Time Clock Card of George Schroeder for Pay Period Ending February 25, 1941.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 15

Tr. 3061½; R. 1300

Time Clock Card of Clarence O. Schwartz for Pay Period Ending February 25, 1941.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 16 (16A-16LL)

Tr. 3062; R. 1197, 1300.

Time Clock Cards of Mary Sawicki.

Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 17

Tr. 3062; R. 1300

Time Clock Card of Louis Thurman for Pay Period Ending February 25, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 18

Tr. 3062; R. 1300

Time Clock Card of William Wendt for Pay Period Ending February 25, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 19

Tr. 3062; R. 1300

Time Clock Card of Arthur Baxter for Pay Period Ending November 29, 1939.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 20

Tr. 3062; R. 1300

Time Clock Card of Clarence Burgess for Pay Period Ending November 29, 1939.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 21

Tr. 3062; R. 1300

Time Clock Card of Nelson Luchtman for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 22

Tr. 3062; R. 1300

Time Clock Card of Catherine May for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 23

Tr. 3062; R. 1300

Time Clock Card of Luella Rohrbeck for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 24

Tr. 3063; R. 1300

Time Clock Card of George Schroeder for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 25

Tr. 3063; R. 1300

Time Clock Card of Clarence O. Schwartz for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 26

Tr. 3063; R. 1300

Time Clock Card of Mary Sawicki for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 27

Tr. 3063; R. 1300

Time Clock Card of Louis Thurman for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 28

Tr. 3063; R. 1300

Time Clock Card of William Wendt for Pay Period Ending November 26, 1940.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 29 (29A-29M)

Tr. 828; R. 600

Receipt for Wages, on Wage-Hour Division Form, signed by Numerous Employees, November, 1939.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 30-A

Tr. 2234; R. 973

Blueprint of Mt. Clemens Pottery Company Plant. Reproduced by Photostat.

BISQUE

KILNS

BISQUE
CAR LOADING

SAGGER FILLING

CLAY SHOP

DRYER

TRIANGLES

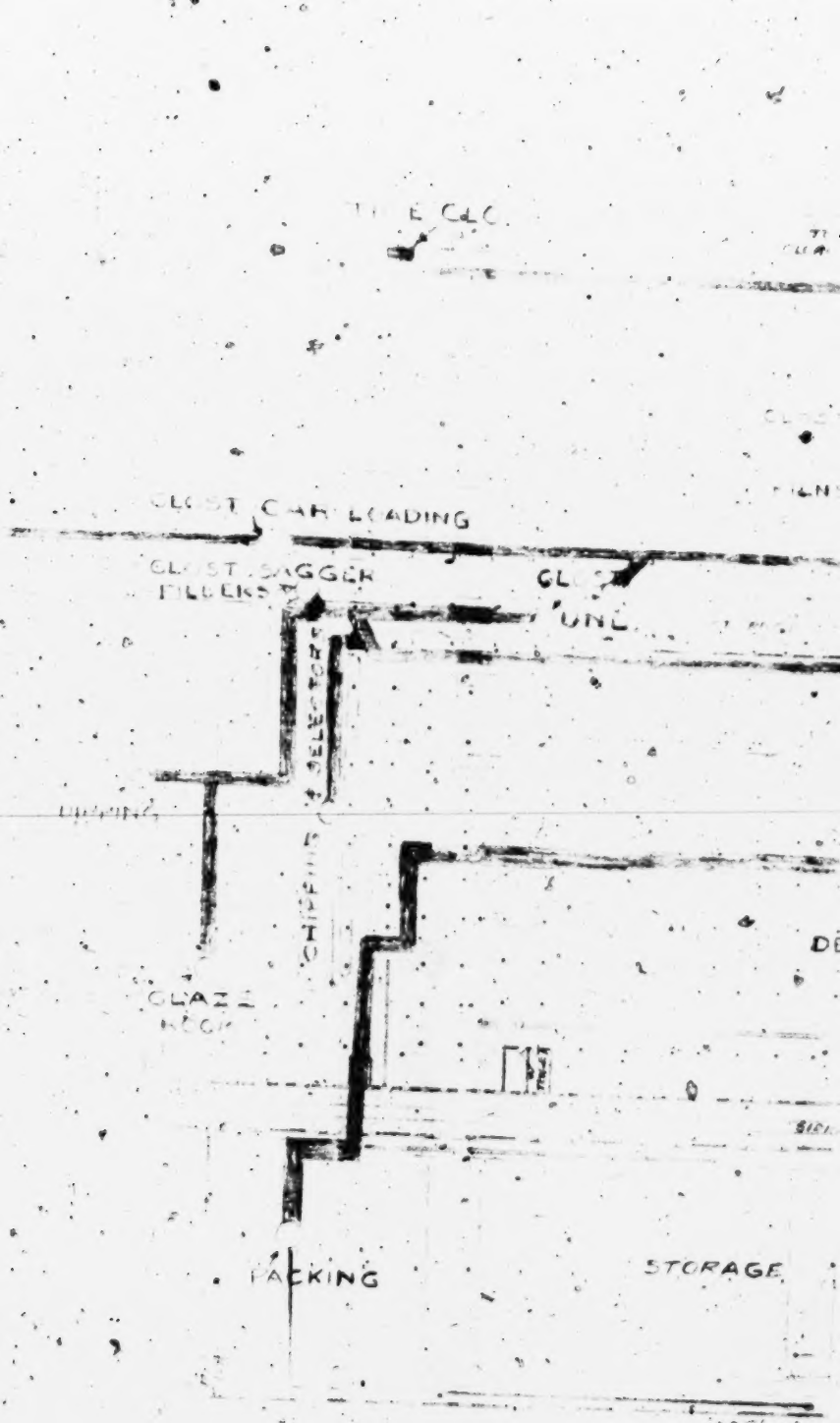
TRIANGLES

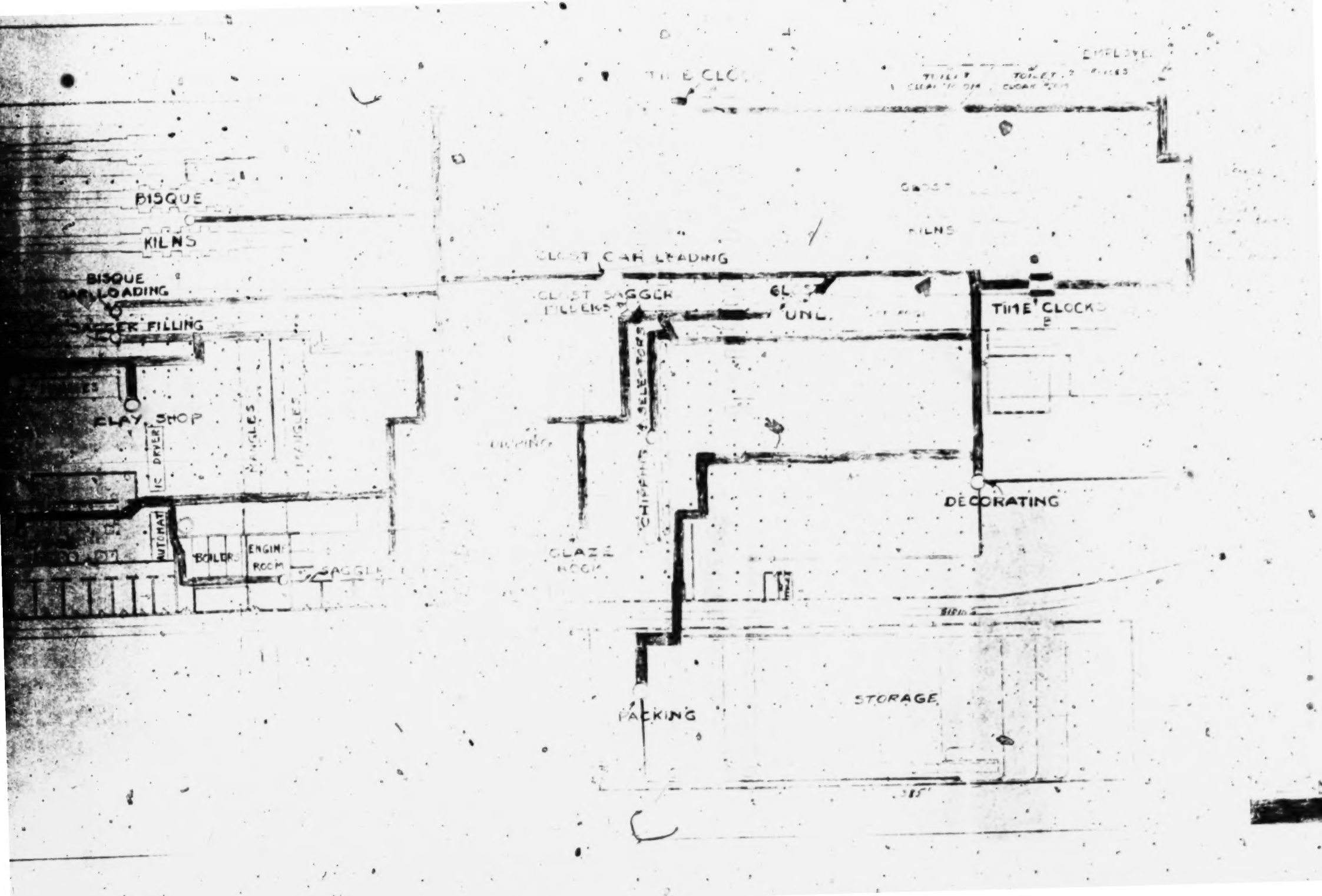
AUTOMAT

BOILER

ENGINE
ROOM

SAGGLI


CLOST CAR LOADING
CLOST SAGGER FILLERS
CLOST UNL
CHIPPING & SELECTORS
GLAZE ROOM
PACKING
STORAGE



BISQUE
KILNS
BISQUE
LOADING
FILLING
CLAY SHOP
DRYER
AUTOMAT
BOILERS
ENGINE
ROOM
SAGGER
CLOST CAR LOADING
CLOST SAGGER
FILLERS
UNL.
TIME CLOCKS
KILNS
DECORATING
CHIPPING & SELECTORS
GLAZE
ROOM
PACKING
STORAGE

Exhibit 31 (31A-31LL)

Tr. 865; R. 611

Time Clock Cards of John Metz.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 32

Tr. 3063; R. 1300

Time Clock Card of Walter Selk for Pay Period End ing December 3, 1940.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 33

Tr. 3063; R. 1300

Time Clock Card of Walter Selk for Pay Period End ing January 7, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 34 (34A-34KK)

Tr. 1159; R. 694

Time Clock Cards of Earl Larimer.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 35 (35A-35LL.)

Tr. 1279; R. 738

Time Clock Cards of Lillian Socia.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 36

Tr. 3063; R. 1300

Time Clock Card of Wilma Redlowski for Pay Period Ending April 8, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 37

Tr. 3063; R. 1300

Time Clock Card of Olga Denisuik for Pay Period Ending April 8, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 38

Tr. 3064; R. 1300

Time Clock Card of Lia Dekiere for Pay Period Ending April 8, 1941.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 39 (39A-39AA)

Tr. 3064; R. 1300

Time Clock Cards of Goldie Broniecki.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 40

Tr. 3064; R. 1300

Time Clock Card of Lia Dekiere for Pay Period Ending October 29, 1940.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 41

Tr. 3065; R. 1300

Time Clock Card of Wilma Redlowski for Pay Period Ending October 29, 1940.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 42

Tr. 3065; R. 1300

Time Clock Card of Olga Denisuik for Pay Period Ending October 29, 1940.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 43

Tr. 1399; R. 774

Bundle of Rubber Thumb Cots.
Physical Exhibit Transmitted to Appellate Court.

Exhibit 44

Tr. 1486; R. 791

Volume of Payroll Work Sheets, January-April, 1941.
Original Exhibit to be Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 45

Tr. 1524; R. 802

Invoice Showing Purchase of Gloves with Rubber Lining, dated March 20, 1941, at price of $2.70 a dozen, subject to cash discount of 2%.

Exhibit 46

Tr. 1524; R. 802

Invoice dated March 20, 1941, covering purchase of 96 dozen pair of Canvas Gloves at $100.80, subject to 2% cash discount, freight prepaid.

Exhibit 47 (47A-47N)

Tr. 1626; R. 826

Pay Stubs of Alice Stoll, August, 1940, through February, 1941.
Original Exhibit to be Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 48 (48A-48D)

Tr. 1662; R. 834

Pay Stubs of Nicholas Dacko, February 6, 1940-March 11, 1941.

Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 49

Tr. 1710; R. 835

Instructions to Decorating Department.

Print in Full.

DECORATING DEPARTMENT

Production with Quality

1. Report for work every day and be on time every morning.
    1. In case of sickness or other necessary causes for being absent, notify your foreman.
    2. In the case of wishing a day off, give your foreman at least a two weeks' notice.
2. Keep Decorating Department in order.
    1. Keep your bench neat and clean.
    2. Keep floor dry and clean.
    3. Keep all print paper cleaned out of your tub and put it in the tubs beside waste water trough.
    4. Keep all white sheets of decal paper in order at your bench and put all dirty sheets in waste rack.
    5. Keep all bad ware cleaned up.
    6. Chipped and cracked ware must be put in central tray every night.

7. Place all breakage at place designated every night.
8. Save all pins and return them to print room daily.
9. In case of returning unused print to print room—put all cut print in a neat package and write the type of print and your name on the package.

3. Decal Operations.

1. Sizing.
   a. Apply a neat uniform size coat of medium thickness.
   b. Make sure the size coat is high enough to carry the print. Avoid as much as possible any size getting on the edge of the ware.
   c. Apply size for center sprays after applying border coat and keep center size coat lighter than border.
   d. Never try patching a size coat.

2. Printing.
   a. Apply decal sprays only when size coat has reached proper tackiness. Never apply decal when size coat is too wet and never let a size coat become too dry.
   b. Line all decal sprays up in their proper position on ware before pressing down. Make sure all decal sprays are on the ware in the exact position from the top and that each spray joins the next one in its proper relation.
   c. Be sure all decal sprays are properly trimmed and do not apply imperfect sprays.
   d. Press all decal sprays down thoroughly after they have been properly placed.

3. Rubbing.
   a. Rub all decal sprays down thoroughly and with extreme pressure.

b. Use a damp rubbing brush and keep the brush in good rubbing condition.
c. After ware has been thoroughly rubbed down, handle it carefully to avoid scratching.

4. Dipping.
   a. Allow ware to remain wholly submerged in tub only long enough to soak the print paper loose.
   b. Remove ware very carefully from tub, making sure every piece of print paper has been removed.
   c. Press all decal sprays down with a soft sponge.
   d. Clean all size from edges of ware or where lines are to go.

5. Inspection.
   a. Inspect every spray of each piece of ware very carefully. See that the decal sprays have not been scratched and that each spray is on exactly in its proper position.
   b. This is the last chance to avoid any bad ware leaving you and directly a responsibility on your part to avoid disastrous department loss.

6. Department Losses.
   1. Breakage.
      a. Always a direct result of carelessness.
      b. You are handling a fine grade of dinnerware and it must be handled as such.
   2. Chipped and Cracked Ware.
      a. This loss also occurs from improper handling of the ware.
      b. Delicate handling and proper stacking of ware will eliminate this source of loss.
   3. Print Loss.
      a. Print represents money and each spray must be accounted for.

b. Make all cutting operations neat and only as directed.
c. Cut all print in the Decorating Department and at your own bench. Have your scissors inspected by your foreman.
d. Keep all print in a box at your bench and in neat uniform order.
e. Avoid print loss occurring from washing off bad ware by eliminating the sources for bad ware.

4. Blistered Ware.
   a. This loss occurs where the ware has not been given proper printing operations.
   b. The main sources are:
      1. Improper size coat.
      2. Printing ware when size coat is too wet.
      3. Printing ware when size coat is too dry.
      4. Not rubbing thoroughly and hard enough.

5. Bad Print.
   a. This loss should never occur on any ware leaving the decal operator. Bad print is the result of decal sprays being cut into, scratched, or where decal print paper has not been removed.
   b. Poor or improper printing is a direct cause.

6. Equipment.
   a. Racks, pin boards, tubs, and pails must be kept in order to prevent maintainance expense.

Exhibit 50

Tr. 1767; R. 842

Volume of Payroll Work Sheets, September, 1938-December, 1938.

Not Received in Evidence.

Exhibit 51

Tr. 1767; R. 843

Volume of Payroll Work Sheets, January, 1939-April, 1939.

Not Received in Evidence.

Exhibit 52

Tr. 1767; R. 843

Volume of Payroll Work Sheets, April, 1939-July, 1939.

Not Received in Evidence.

Exhibit 53

Tr. 1767; R. 843

Volume of Payroll Work Sheets, August, 1939-November, 1939.

Not Received in Evidence.

Exhibit 54

Tr. 1768; R. 843

Volume of Payroll Work Sheets, November, 1939-February, 1940.

Not Received in Evidence.

Exhibit 55

Tr. 1768; R. 843

Volume of Payroll Work Sheets, February, 1940-June, 1940.

Not Received in Evidence.

Exhibit 56

Tr. 1768; R. 843

Volume of Payroll Work Sheets, June, 1940-September, 1940.
Not Received in Evidence.

Exhibit 57

Tr. 1768; R. 843

Volume of Payroll Work Sheets, September, 1940-December, 1940.
Not Received in Evidence.

Exhibit 58 (58A-58MM)

Tr. 1795; R. 852

Time Clock Cards of Eva Freddle.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 59-59A

Tr. 1809; R. 858

Pay Stubs of Eva Freddle.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 60

Tr. 1839; R. 867

Large Sheet of "Decal."
Not Offered in Evidence.

Exhibit 61

Tr. 1841; R. 868

Group of sixteen "Decal" Sheets Pinned Together.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 62 (62, 62A-MM)

Tr. 1944; R. 890

Time Clock Cards of Dorothy May.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 63 (63, 63A-FF)

Tr. 1944; R. 890

Time Clock Cards of Nicholas Dacko.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 64

Tr. 3501; R. 1471

Constitution of United Pottery Workers.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 65

Tr. 2234; R. 973

Table Showing Distances From the Clocks to Various Departments.

Reproduced in Full.

TIME CLOCK A

Distances from clocks to departments:

Department	Closest	Farthest
Clay Shop	400	800
Bisque Sagger Filling	485	570
Bisque Car Loading	430	530
Casting Dept.	685	820
Mould Dept.	820	890
Slip House	590	710
Sagger Dept.	450	510

TIME CLOCK B

Decorating Dept.	170	350
Packing Dept.	465	760
Chippers and Selectors	285	450
Glost Sagger Fillers	310	420
Glost Car Loaders	225	325
Glost Sagger Unloading	160	350
Glost Kilns	130	325
Bisque Kilns	430	820
Dipping and Brushing	385	510
Glaze Room	450	610
Maintenance	550	590
Boiler and Engine Room	780	
Total floor area of plant	8.28 acres	

Exhibit 66

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Collective Agreement between Edward G. Budd Manufacturing Company and Local 306, U.A.W.A. (C.I.O.) and Shop Rules.

Article VI, Section 2, provides:

"Starting and quitting time shall be strictly observed, and employees shall not enter the plant more than thirty (30) minutes before starting time. During such thirty minute period employees shall conduct themselves in an orderly manner and shall not disturb other employees who are at work or otherwise interfere with the earning power of employees at work."

The Shop Rules provide:

"Employees will not be allowed to enter plant more than thirty (30) minutes before regular starting time for their shift and must be out of plant within thirty (30) minutes after completion of regular shift, unless otherwise instructed by their supervisor.

* * * * *

"Employees must be at their machines or benches, ready for work before starting time.

* * * * *

"Employees shall not leave their work places before quitting time."

Exhibit 67

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Booklet Entitled "Information for Hudson Employees."

This booklet contains shop rules providing in part as follows:

"Hours

"The normal starting time of the factory for the regular day shift is 7:00 A. M. Any variation in the starting time of this shift and the starting time of other shifts will be designated by your supervisor.

"Lunch Period

"The lunch period of the regular day shift referred to above will be from 11:30 A. M. to 12 noon. Lunch periods for other shifts will be designated by your supervisor. Lunch wagons are provided at convenient places throughout the plants. Washing up, loafing near the exits or lining up at the lunch wagons before the lunch period, is prohibited.

* * * * *

"Tardiness

"Habitual tardiness will not be tolerated.

"Lateness of an employee will be taken care of by the Timekeeper as follows:

"Up to fourteen (14) minutes late, inclusive, employee will be docked one-quarter (¼) hour."

"Fifteen (15) minutes late or over, employee will be docked one-half (½) hour, etc."

Exhibit 68

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Collective Agreement between Tampa Shipbuilding Company and Metal Trades Department of American Federation of Labor.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 69

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Collective Agreement between Johns-Manville Company and various labor unions.

This agreement provided in part:

> "When a shift begins, each worker is required to be in his place.
>
> "'Day workers' shall be at their respective posts ready for work at the time their pay starts and shall not leave their posts or quit work in advance of the time their pay stops."

Exhibit 70

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Shop Rules of Briggs Manufacturing Company, Detroit, Michigan.

These Rules provide in part as follows:

> "'Time Cards
>
> "Employees will be assigned a clock or time card upon which they are required to register the time each working day as follows:

"1—Before starting work.

"2—Once during lunch period (within fifteen (15) minutes prior to the end of period).

"3—After completing work.

"Employees failing to register time cards either 'in' or 'out' will be penalized one quarter hour's time.

"An employee who neglects to register his time card upon starting or leaving work must present the card to his foreman for approval for time not registered.

"The penalty for being late will be the remainder of the quarter hour in which the card is registered in, plus the time the employee is late.

"An employee who registers another employee's time card, or who allows his time card to be registered by another, or who in any way tampers with the registering of time cards, will be subject to immediate dismissal.

"Clock cards must be left in the rack and not carried around.

* * * *

"General Working Rules

"Employees must be in their departments ready for work when the starting signal sounds, and remain at work until the signal sounds at the regular quitting time."

Exhibit 71

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Collective Agreement between Briggs Manufacturing Company—Cleveland Plant—and Local 948, U.A.W.A. (C.I.O.), and Shop Rules.

Section 1 of Article 5 provides as follows:

"Every employee must ring his clock card as follows:

"(a) Before his starting time.

"(b) At the completion of his work.

"Employees must be in their departments ready for work when the signal is given for work to begin and must remain at their work until the signal is given to quit.

"Any failure to ring the clock card will result in the deduction of fifteen (15) minutes. The penalty for being late will be the remainder of the quarter hour in which the card is punched in, plus the time the employee is late."

Exhibit 72

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Shop Rules of Michigan Steel Tube Products Company.

Paragraphs 11 and 12 of the Shop Rules provide as follows:

"Be at your machine or station ready to work when the whistle blows, and remain there and continue working until the quitting whistle blows.

"Stop your machine at time specified for your department. Do not begin washing yourself or changing your clothes until the whistle blows."

Exhibit 73

Tr. 2216, 3195, 3466-71, 3504; R. 965, 1350, 1463, 1473

Collective Agreement—so-called "Appalachian Agreement" between National Coal Association and United Mine Workers of America.

The Section on Maximum Hours and Working Time provides in part as follows:

"Drivers shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they

receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named. The method at present existing covering the harnessing and unharnessing of mules shall be continued throughout the life of this Agreement.

"Motormen and trip riders shall be at the passway where they receive the cars at starting time. The time required to take motors to the passway at starting time and departing from the same at quitting time shall not be regarded as a part of the day's labor, their time beginning when they reach the change or parting at which they receive cars, but in no case shall their time be docked while waiting for cars at the point named."

Exhibit 74 (74A-74LL)

Tr. 2453; R. 1068

Time Clock Cards of Delbert Phillips.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 75 (75A-75LL)

Tr. 2466; R. 1072

Time Clock Cards of Wells Clay.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 76

Tr. 2506; R. 1095

Floor Plan of Glost Belt.
Reproduce in full.

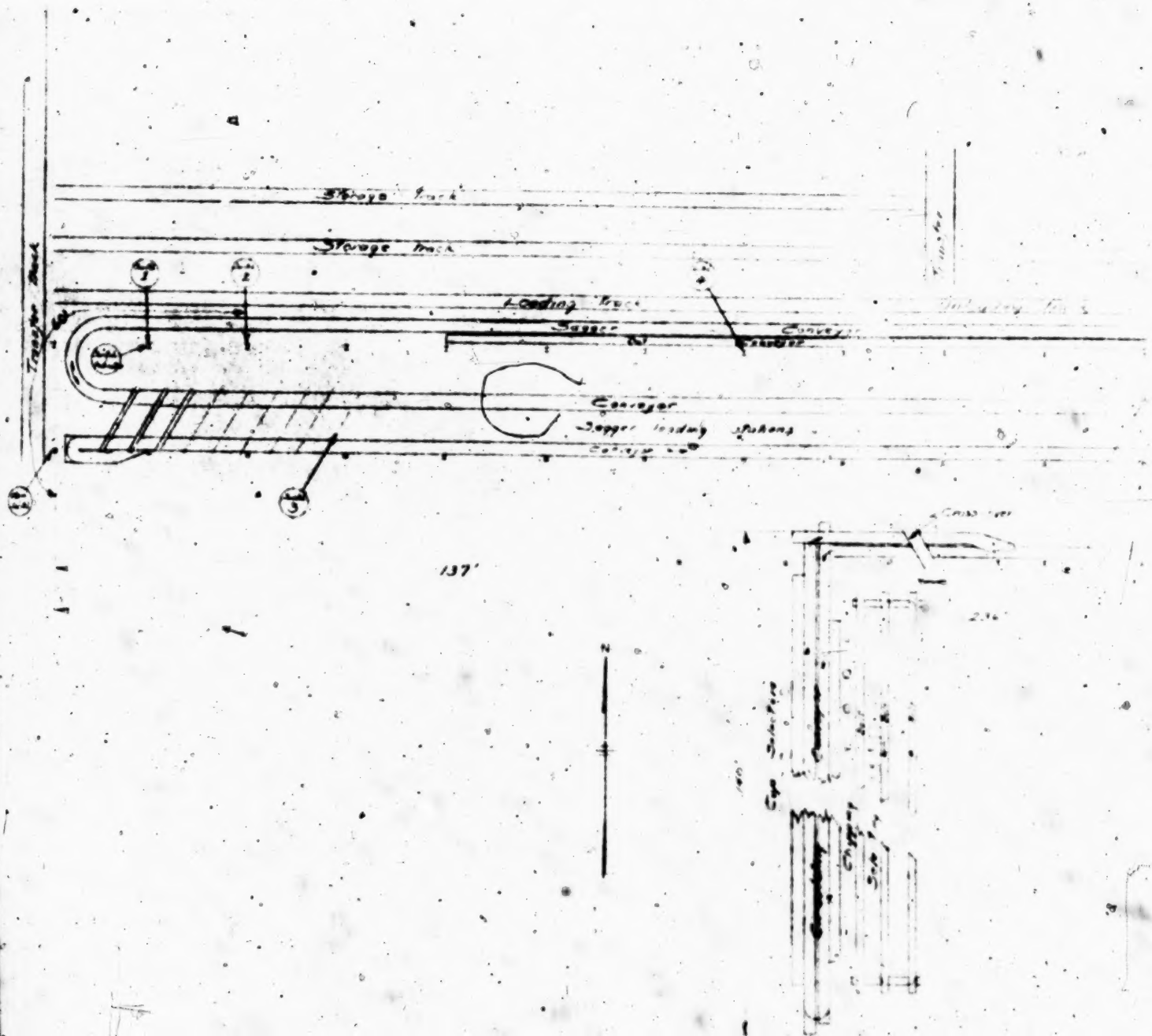

Storage Track
Storage Track
Loading Track
Sagger
Conveyor
Conveyor
Sagger loading stations
Transfer Track
137'
N

Exhibit 77

Tr. 2522; R. 1099

Sheet of Decalcomania.

Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 78

Tr. 3297; R. 1391

Table showing Supplies Purchased by Dorothy May from October 25, 1938, to April 22, 1941.

Reproduce in Full.

SUPPLIES PURCHASED BY DOROTHY MAY

Oct.	25, 1938	None		July	11, 1939	None	
Nov.	8, 1938		.46	July	25, 1939	None	
Nov.	22, 1938	None		Aug.	8, 1939		.32
Dec.	6, 1938	None		Aug.	22, 1939	None	
Dec.	16, 1938	None		Sept.	5, 1939		.32
Dec.	31, 1938		.32	Sept.	19, 1939	None	
Jan.	10, 1939	None		Oct.	3, 1939	None	
Jan.	24, 1939		.64	Oct.	17, 1939	None	
Feb.	7, 1939	None		Oct.	31, 1939	None	
Feb.	21, 1939	None		Nov.	14, 1939	None	
Mar.	7, 1939		.32	Nov.	28, 1939	None	
Mar.	21, 1939	None		Dec.	12, 1939		.16
Apr.	4, 1939	None		Dec.	26, 1939	None	
Apr.	18, 1939		.44	Dec.	31, 1939	None	
May	2, 1939	None		Jan.	9, 1940	None	
May	16, 1939		.64	Jan.	23, 1940	None	
May	29, 1939	None		Feb.	6, 1940		.50
June	13, 1939	None		Feb.	13, 1940	None	
June	27, 1939		.28	Mar.	5, 1940	None	

Mar.	19, 1940	None		Oct.	15, 1940	None	
Apr.	2, 1940		.32	Oct.	29, 1940	None	
Apr.	16, 1940	None		Nov.	12, 1940	None	
Apr.	30, 1940	None		Nov.	26, 1940	None	
May	14, 1940	None		Dec.	10, 1940	None	
May	28, 1940	None		Dec.	24, 1940		.60
June	11, 1940	None		Dec.	31, 1940	None	
June	25, 1940		.36	Jan.	14, 1941	None	
July	9, 1940	None		Jan.	28, 1941	None	
July	23, 1940	None		Feb.	11, 1941	None	
Aug.	6, 1940	None		Feb.	25, 1941	None	
Aug.	20, 1940		.18	Mar.	11, 1941		.16
Sept.	3, 1940	None		Mar.	25, 1941	None	
Sept.	17, 1940		.32	Apr.	8, 1941	None	
Oct.	1, 1940	None		Apr.	22, 1941	None	
							$6.34

Exhibit 79

Tr. 2606; R. 1147

Annual Earnings Card of Barbara Boeling.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 80 (80A-80C)

Tr. 2608, 3066; R. 1150, 1300

Typical Set of Records—Time Clock Card, Work Sheet, Earnings Card, Check Identification Slip—Arthur Sibbi
Reproduce in Full.

PAY ENDING 916 MAR 25 1941
19

370-10-2623

NO. 916 NAME ARTHUR SIBBI

	Morning IN	Noon OUT	Noon IN	Night OUT	Extra IN	Extra OUT	
M	648	1156					
T	647	1154	1233	416			
W	647	1150	1247	400			
F	647	1151	1232	417			
S	647	1151	1232	416			
			1232	414			
M	647	1141	1232	431			
T	647	1153	1232	417			
W	647	1153	1232	417			
T	647	1139	1233	431			

TOTAL TIME ..... HRS

RATE .....

TOTAL WAGES .....

Form 4548 Printed by The Cincinnati Time Recorder Co. Cincinnati, O.

PAY ENDING 19

| | | |

RECEIVED FROM

The Mount Clemens Pottery Co.

Wages in full for pay ending 19

as per the following statement:

	Dollars	Cents
916 MAR 25 370-10-2623 916 ARTHUR SIBBI Total Amount Due		

Name Arthur Sibbi

Per .....

Company not responsible unless presented and signed by party to whom drawn

INDIVIDUAL EARNINGS RECORD

370-10-2623
916 ARTHUR SIBBI

Def. & SOC
6-23-42

STATE U I | FED O A B | INSUR | MISC

TIME WORKED DAYS	HOURS	RATE	GROSS PAY	DEDUCTIONS INC. SEC. PERSON STATE U I FED O A B	INSUR	MISC	NET PAY	DATE
	7150	127	9071	91	120		8860	JUN 14 41
	7800	128	9985	100			9885	[illegible]
	7925	129	10234	102	120		10012	FEB 11 41
	7600	125	9462	95			9367	FEB 25 41
	7225	129	9324	93	120		9111	MAR 11 41
	7350	136	9981	100			9881	MAR 25 41
	7875	137	10817	108	120		10589	APR 8 41
	2450	147	3604	36			3568	APR 22 41
	3025	97	2935	29	120		2786	MAY 20 41
	6850	118	8093	81	120		7892	JUN 3 41
	7075	121	8538	85			8453	JUN 17 41

CLOCK NO | REG. NO | MOTHER'S MAIDEN NAME

BIRTH DATE | TERMINATION | SEX | NO. OF DEPENDENTS

OCCUPATION | NATIONALITY | DATE STARTED | DATE LEFT EMPLOY | REASON

RATE | ADDRESS | TEL. NO.

MT. CLEMENS POTTERY CO.
MT. CLEMENS, MICH.

Exhibit 81 (81A-81J)

Tr. 2653; R. 1159, 1165

Receipt for Wages, on Wage-Hour Division form signed by numerous employees November, 1939.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 82 (82A-82LL)

Tr. 2736; R. 1197

Time Clock Cards of Clarence Burgess.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 83 (83A-83JJ)

Tr. 2738; R. 1198

Time Clock Cards of Nelson Luchtman.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 84

Tr. 2957; R. 1300

Picture of Water Tower on Mt. Clemens Pottery Plant. The Water Tank Bears the Following Language:

"Mt. Clemens Pottery Company
Owned by
S. S. Kresge Company"

Exhibit 85-AB

Tr. 3066, 3070; R. 1300

Earnings Records of John Metz.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 86-ABC

Tr. 3066, 3070; R. 1300

Earnings Records of Earl Larimer.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 87-ABC

Tr. 3066, 3070; R. 1300

Earnings Records of Lillian Socia.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 88-ABC

Tr. 3066, 3070; R. 1300

Earnings Records of Eva Freddle.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 89 and 89-A

Tr. 3066, 3070; R. 1300

Earnings Records of Nicholas Dacko.
Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 90

Tr. 3069; R. 1300

Map of Mt. Clemens.
Original Exhibit Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 91

Tr. 3139; R. 1323

Copy of Letter from Harry A. Reifin to Charles E. Doll, Sr., September 8, 1941.
Reproduce in Full.

September 8, 1941
21-114
XD:KKK:EM

348 Federal Building

Mt. Clemens Pottery Company
Mt. Clemens, Michigan
Attention: Mr. Charles E. Doll, Sr.,
Vice-President & General Manager

Gentlemen:

Information has been received in this office indicating that some of the employees employed by your company

are not being compensated correctly for the actual time worked in the production of goods for interstate commerce.

Reference is made to a situation similar to this: When an employee punches his or her time card IN at 6:31 A. M. and immediately proceeds to his or her work, this employee is not credited with the time worked from 6:31 A. M. to 6:45 A. M., but the compensable time begins at 6:45 A. M., even though these 14 minutes have been spent in the production of goods which ultimately move in interstate commerce.

Enclosed herewith is a copy of the Fair Labor Standards Act of 1938. Your particular attention is directed to the contents of Section 3(g) which states as follows: "'Employ' includes to suffer or permit to work." Also enclosed for your information is a copy of our Interpretative Bulletin No. 13, Hours Worked—Determination of Hours for Which Employees Are Entitled to Compensation Under the Fair Labor Standards Act of 1938.

In order that you may be fully aware of your responsibilities and probable liabilities under the provisions of the Fair Labor Standards Act, the above is called to your attention. The above conditions in the opinion of this office constitute violations of the provisions of the Fair Labor Standards Act.

If you have any questions as to the application of the provisions of the Fair Labor Standards Act to your business, please do not hesitate to communicate with us.

Very truly yours,

Harry A. Reifin
Acting Supervising Inspector

Encs.

Exhibit 92

Pf. 3206, 3504; R. 1350, 1473

Compilation of Clauses from Collective Agreements and Shop Rules.
Reproduce in Full.

EXCERPTS FROM COLLECTIVE AGREEMENTS AND SHOP RULES ISSUED PURSUANT THERETO, WITH REFERENCE TO HOURS OF WORK, USE OF TIME CLOCKS, ETC.

HOURS OF WORK

"Each shift or group shall have a standard starting and quitting time, subject to demands of production."

Collective Agreement, U.A.A.A.I.W., C.I.O. and Briggs Manufacturing Company, page 24

"There shall be a specific starting and quitting time. The starting and quitting time may be changed where necessary to maintain continuity of employment by agreement of the Companies and one or more members of the Executive Shop Committee."

"Starting and quitting time shall be strictly observed, and employees shall not enter the plant more than thirty (30) minutes before starting time."

Collective Agreement, U.A.W., C.I.O. and Budd Wheel Company, page 17 and 19

"Unless local conditions require the establishment of a different starting time, which may be done by mutual

consent of the parties hereto, the first shift shall start not earlier than 7 a.m. and not later than 8 a.m. and continue eight (8) consecutive hours exclusive of lunch period."

Collective Agreement, Metal Trades Dept., A.F.L. and Tampa Shipbuilding Company, page 3

"The normal starting time of the factory for the regular day shift is 7:00 a.m. Any variation in the starting time of this shift and the starting time of other shifts will be designated by your supervisor."

Shop Rules, Hudson Motor Car Company page 9

USE OF TIME CLOCKS

"Employees will be assigned a clock or time card upon which they are required to register the time each working day as follows:

(1) Before starting work
(2) Once during lunch period (within fifteen (15) minutes prior to the end of period)
(3) After completing work

Employees failing to register time cards either 'in' or 'out' will be penalized one-quarter hour's time."

"Employees must be in their departments ready for work when the starting signal sounds, and remain at work until the signal sounds at the regular quitting time."

Shop Rules, Briggs Manufacturing Company, Detroit, pages 5 and 7

"Every employee must ring his clock card as follows:

(a) Before his starting time
(b) At the completion of his work.

Employees must be in their departments ready for work when the signal is given for work to begin and must remain at their work until the signal is given to quit."

Collective Agreement, U.A.A.A.I.W., C.I.O., and Briggs Manufacturing Company, page 27

"Every employee on time-card basis must punch only his own card. Punch in and out when entering or leaving the mill."

"Be at your machine or station ready to work when the whistle blows, and remain there and continue working until the quitting whistle blows. Stop your machine at time specified for your department. Do not begin washing yourself or changing your clothes until the whistle blows."

Shop Rules, Michigan Steel Tube Products Company, page 9 and 20

"No employee shall fail to ring his own clock card before he commences work or after he finishes work. No employee shall enter his department or the plant more than fifteen (15) minutes before the time when his work is to begin and no employee who has ceased his work shall remain in his department or in the plant more than fifteen (15) minutes thereafter without permission of his foreman."

Selected clauses from Current Labor Contracts, Automotive Parts and Equipment Mfgrs., Inc., pages 128-29 and 217.

"Employees will not be allowed to enter plant more than thirty (30) minutes before regular starting time for their shift and must be out of plant within 30 minutes after completion of regular shift, unless otherwise instructed by their supervisor."

"Employees must be at their machines or benches, ready for work before starting time."

Shop Rules, Budd Wheel Company, pages 27 and 28

"When a shift begins, each worker is required to be in his place."

"'Day workers' shall be at their respective posts ready for work at the time their pay starts and shall not leave their posts or quit work in advance of the time their pay stops."

Collective Agreement, A.F.L. and Johns-Manville Products Corp., page 7

MISCELLANEOUS CLAUSES RELATING TO COMPUTATION OF HOURS OF WORK

"Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those Mine Workers required on account thereof; and also excepting that number of Mine Workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine."

"Drivers shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named. The method at

present existing covering the harnessing and unharnessing of mules shall be continued throughout the life of this Agreement.

"Motormen and trip riders shall be at the passway where they receive the cars at starting time. The time required to take motors to the passway at starting time and departing from the same at quitting time shall not be regarded as a part of the day's labor, their time beginning when they reach the change or parting at which they receive cars, but in no case shall their time be docked while waiting for cars at the point named."

Collective Agreement, United Mine Workers and Coal Operators Associations, pages 1 and 2

"Lateness of an employee will be taken care of by the Timekeeper as follows:

Up to fourteen (14) minutes late, inclusive, employee will be docked one-quarter (¼) hour.
Fifteen (15) minutes late or over, employee will be docked one-half (½) hour, etc.

"Washing up, changing clothes or leaving your required place so as to be near a clock or lunch wagon before a whistle blows, either at noon or closing time, will not be permitted. Remain at your proper place and make no preparation for leaving until the whistle blows."

Shop Rules, Hudson Motor Car Company, pages 10 and 20

"The penalty for being late will be the remainder of the quarter hour in which the card is punched in, plus the time the employee is late."

Collective Agreement, U.A.A.A.I.W., C.I.O. and Briggs Manufacturing Company, page 27

"The penalty for being late will be the remainder of the quarter hour in which the card is registered in, plus the time the employee is late."

Shop Rules, Briggs Manufacturing Company, page 5

"Employees shall not enter their departments earlier than is necessary to report at their regular work places at their regular starting time, and they shall not remain in their departments after the close of their regular work shifts excepting for periods of authorized overtime."

Collective Agreement, United Rubber Workers and B. F. Goodrich Company, "Collective Bargaining Contracts" (Bureau of National Affairs, 1941) page 321

Exhibit 93 (93A-93KK)

Tr. 3251, 3254, 3260; R. 1371, 1372

Time Clock Cards of Floyd Pearl.

Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 94 (94A-94Z)

Tr. 3251, 3254; R. 1371, 1372

Time Clock Cards of Harry Lozen.

Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 95 (95A-95P)

Tr. 3251, 3254; R. 1371, 1372

Time Clock Cards of George Leibziet.

Original Exhibits Transmitted to Appellate Court, in Lieu of Printing.

Exhibit 96

Tr. 3304; R. 1395

Withdrawn

Exhibit 97

Tr. 3266; R. 1378

Table Showing Distribution of "Ring-Ins" for 7:00 A.M. Shift, November 8, 1939.

Reproduce in Full

DISTRIBUTION OF "RING-INS" FOR 7 A.M. SHIFT—11/8/39

		Total
6:46	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	25
6:47	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	24
6:48	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	29
6:49	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	27
6:50	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	16
6:51	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	29
6:52	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	26
6:53	1 1 1 1 1 1 1 1 1 1 1 1 1 1	12
6:54	1 1 1 1 1	5
6:55	1 1 1 1 1 1 1 1	8
6:56	1 1 1 1 1 1	6
6:57	1	1
6:58		0
6:59		0
7:00		0
		208

Exhibit 98

Tr. 3266; R. 1378

Table Showing Distribution of "Ring-Ins" for 7:00 A.M. Shift, July 17, 1940.
Reproduce in Full.

DISTRIBUTION OF "RING-INS" FOR 7 A.M. SHIFT—7/17/40

		Total
6:46	11111 11111 11111 11111 11111 11	27
6:47	11111 11111 11111 11111 11111	25
6:48	11111 11111 11111 11111 1111	24
6:49	11111 11111 11111 11111 11111 11	27
6:50	11111 11111 11111 11111 11111	25
6:51	11111 11111 11111 11111 11111 1111	29
6:52	11111 11111 11111 11111 11	22
6:53	11111 11111 11111 1	16
6:54	11111 11111 111	13
6:55	111	3
6:56	11	2
6:57	1	1
6:58	111	3
6:59		0
7:00	1	1
		218

Exhibit 99

Tr. 3266; R. 1378

Table Showing Distribution of "Ring-Ins" for 7:00 A.M. Shift, January 3, 1941.
Reproduce in Full.

DISTRIBUTION OF "RING-INS" FOR 7 A.M. SHIFT—1/3/41

		Total
6:46	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	27
6:47	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	26
6:48	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	28
6:49	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	21
6:50	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	27
6:51	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	28
6:52	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	24
6:52	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	24
6:54	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	26
6:55	1 1 1 1 1 1	6
6:56	1	1
6:57		0
6:58	1 1	2
6:59		0
7:00	1	1
		241

Exhibit 100 and 100-A

Tr. 3276; R. 1382

Analysis of Time Clock Records of Kiln Foremen and Working Hours.
Reproduce in Full.

ANALYSIS OF WORKING HOURS AND TIME-CLOCK RECORDS OF KILN FIREMEN

Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	P.M.	A.M.			A.M.	P.M.			P.M.	P.M.		
10:55	11:00	7:00	7:05	6:51	7:00	3:00	3:01	2:48	3:00	11:00	11:13	Nov. 28, 1939
10:55			7:05	6:50			3:03	2:49			11:01	
10:55			7:09	6:59			3:00	2:49			11:04	
10:47			7:00	6:50			3:01	2:48			11:01	
10:47	11:00	7:00	7:04	6:49	7:00	3:00	3:00	2:52	3:00	11:00	11:02	Nov. 29, 1939
10:47			7:04	3:49			3:05	2:49			11:01	
10:54			7:10	6:49			3:01	2:49			11:02	
10:47			7:00	6:49			3:00	2:47			11:01	
10:47	11:00	7:00	7:12	6:51	7:00	3:00	3:05	2:46	3:00	11:00	11:01	Nov. 30, 1939
10:48			7:05	6:49	7:00	2:45	2:48	2:35	2:45	11:00	11:02	
10:51			7:04	6:51	7:00	2:45	2:46	2:[illegible]7	2:45	11:00	11:01	
10:49			7:05	6:53	7:00	2:45	2:46	2:38	2:45	11:00	11:02	
10:54	11:00	7:00	7:08	6:52	7:00	3:15	3:16	3:02	3:15	11:00	11:05	Dec. 1, 1939
10:48			7:01	6:47	7:00	3:15	3:27	3:02	3:15	11:00	11:04	
10:49			7:09	6:49	7:00	3:00	3:00	2:50	3:00	11:00	11:06	
10:49			7:01	6:49	7:00	3:00	3:00	2:49	3:00	11:00	11:02	

Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	P.M.	A.M.			A.M.	P.M.			P.M.	P.M.		
10:51	11:00	7:00	7:04	6:49	7:00	3:00	3:02	2:47	3:00	11:00	11:02	Dec. 2, 1939
10:52			7:03	6:48		3:00	3:01	2:46	3:00		11:00	
10:50			7:01	6:46		3:00	3:03	2:46	3:00		11:00	
10:53			7:00	6:48		1:00	1:06	12:52	1:00		11:02	
10:46	11:00	7:00	7:06	6:49	7:00	3:00	3:03	2:49	3:00	11:00	11:01	Dec. 3, 1939
10:46			7:00	6:50			3:02	2:49			11:04	
10:50			7:05	6:49			3:04	2:49			11:01	
10:50			7:05	6:50			3:04	2:50			11:01	
10:46	11:00	7:00	7:04	6:49	7:00	3:00	3:03	2:47	3:00	11:00	11:01	Dec. 4, 1939
10:46			7:00	6:51			3:00	2:47			11:03	
10:50			7:05	6:49			3:03	2:47			11:03	
10:47			7:06	6:51			3:00	2:49			11:03	
10:47	11:00	7:00	7:00	6:49	7:00	3:00	3:00	2:49	3:00	11:00	11:02	Dec. 5, 1939
10:47			7:00	6:49			3:05	2:55			11:01	
10:47			7:07	6:49			3:00	2:47			11:03	
10:47			7:00	6:51			3:08	2:50			11:01	
10:49	11:00	7:00	7:05	6:49	7:00	3:00	3:04	2:51	3:00	11:00	11:00	Dec. 6, 1939
10:47			7:00	6:49		3:00	3:14	2:52	3:00		11:00	
10:51			7:05	6:53		3:00	3:04	2:51	3:00		11:00	
10:51			7:05	6:51		5:00	5:01	4:46	5:00		11:05	

(Continued on next page)

Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	P.M.	A.M.			A.M.	P.M.			P.M.	P.M.		
10:47	11:00	7:00	7:10	6:49	7:00	3:00	3:00	2:49	3:00	11:00	11:00	Dec. 7, 1939
10:47			7:00	6:49			3:00	2:48			11:03	
10:47			7:05	6:49			3:13	2:53			11:00	
10:48			7:07	6:50			3:09	2:48			11:00	
10:50	11:00	7:00	7:07	6:47	7:00	3:00	3:01	2:48	3:00	11:00	11:04	Dec. 8, 1939
10:50			7:03	6:47			3:00	2:48			11:01	
10:52			7:01	6:46			3:01	2:49			11:01	
10:49			7:01	6:52			3:01	2:48			11:04	
10:53	11:00	7:00	7:01	6:48	7:00	3:00	3:00	2:49	3:00	11:00	11:00	Dec. 9, 1939
10:48			7:04	6:47			3:01	2:48			11:00	
10:46			7:07	6:48			3:02	2:49			11:00	
10:53			7:00	6:52			3:05	2:50			11:00	
10:50			7:05	6:49			3:05	2:48			11:03	Dec. 10, 1939
10:50			7:05	6:51			3:00	2:47			11:01	
10:50			7:05	6:49			3:03	2:49			11:01	
10:50			7:00	6:51			3:01	2:51			11:00	
10:49	11:00	7:00	7:05									
10:47	11:00	7:00	7:04	6:50	7:00	3:00	3:00	2:48	3:00	11:00	11:02	Dec. 11, 1939
11:15	11:15	7:00	7:00	6:49			3:02	2:48			11:05	
10:48	11:00	1:00	1:00	6:51			3:03	2:48			11:05	
12:46	1:00	6:45	6:45	6:50			3:00	2:48			11:03	

ANALYSIS OF WORKING HOURS AND TIME-CLOCK RECORDS OF KILN FIREMEN

Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	A.M.	P.M.			P.M.	P.M.			P.M.	A.M.		
6:50	7:00	3:00	3:02	2:59	3:00	11:00	11:03	10:48	11:00	7:00	7:02	Mar. 11, 1941
6:52		3:00	3:05	2:51	3:00		11:03	10:48			7:02	
6:52		3:00	3:05	2:47	3:00		11:02	10:52			7:05	
6:49		3:15	3:17	3:02	3:15		11:02	10:48			7:05	
6:50	7:00	3:00	3:04	2:46	3:00	11:00	11:10	10:49	11:00	7:00	7:05	Mar. 12, 1941
6:53			3:01	2:50			11:00	10:49			7:05	
6:52			3:04	2:46			11:00	10:49			7:04	
6:53			3:01	2:46			11:04	10:48			7:02	
6:51	7:00	3:00	3:05	2:48	3:00	11:00	11:03	10:47	11:00	7:00	7:11	Mar. 13, 1941
6:51			3:00	2:50			11:04	10:47			7:05	
6:49			3:04	2:46			11:02	10:51			7:03	
6:52			3:06	2:46			11:01	10:51			7:06	
6:51	7:00	2:45	2:50	2:42	2:45	11:00	11:01	10:52	11:00	7:00	7:00	Mar. 14, 1941
6:50		2:45	2:49	2:42	2:45		11:00	10:51			7:05	
6:51		3:00	3:07	2:46	3:00		11:02	10:46			7:00	
6:51		3:00	3:07	2:47	3:00		11:01	10:46			7:07	

(Continued on next page)

Defendant's Exhibit 100-A

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Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	A.M.	P.M.			P.M.	P.M.			P.M.	A.M.		
6:52	7:00	3:00	3:18	2:48	3:00	11:00	11:02	10:53	11:00	7:00	7:06	Mar. 15, 1941
6:50		3:00	3:02	2:50	3:00		11:03	10:51			7:02	
6:50		3:00	3:02	2:48	3:00		11:02	10:48			7:03	
6:46		3:15	3:21	3:05	3:15		11:02	10:53			7:08	
6:48	7:00	3:00	3:06	2.56	3:00	11:00	11:00	10:52	11:00	7:00	7:07	Mar. 16, 1941
6:53			3:09	2:48			11:05	10:47			7:06	
6:52			3:01	2:48			11:00	10:52			7:07	
6:52			3:01	2:48			11:01	10:46			7:05	
6:49	7:00	3:00	2:11	2:50	3:00	11:00	11:01	10:46	11:00	7:00	7:10	Mar. 17, 1941
6:52			3:04	2:46	3:00	11:00	11:01	10:46			7:11	
6:51			3:07	2:46	3:00	11:00	11:00	10:46			7:03	
6:51			3:11	3:03	3:15	11:15	11:23	10:49			7:08	
6:54	7:00	3:00	3:06	2:46	3:00	11:00	11:03	10:46	11:00	7:00	7:04	Mar. 18, 1941
6:48			3:02	2:46			11:01	10:48			7:06	
6:49			3:00	2:50			11:01	10:48			7:05	
6:51			3:00	2:53			11:03	10:47			7:07	
6:54	7:00	3:00	3:03	2:46	3:00	11:00	11:00	10:51	11:00	7:00	7:12	Mar. 19, 1941
6:54			3:01	2:46			11:02	10:46			7:07	
6:50			3:04	2:46			11:01	10:50			7:06	
6:50			3:05	2:52			11:08	10:51			7:07	

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Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	A.M.	P.M.			P.M.	P.M.			P.M.	A.M.		
6:51	7:00	3:00	3:00	2:54	3:00	11:00	11:01	10:50	11:00	7:00	7:04	Mar. 20, 1941
6:50			3:08	2:51			11:01	10:52			7:08	
6:51			3:00	2:46			11:01	10:49			7:08	
6:51			3:02	2:50			11:02	10:51			7:03	
6:52	7:00	3:00	3:02	2:54	3:00	11:00	11:01	10:47	11:00	7:00	7:01	Mar. 21, 1941
6:52			3:01	2:50			11:02	10:47			7:00	
6:52			3:11	2:54			11:05	10:49			7:00	
6:50			3:01	2:50			11:02	10:47			7:02	
6:47	7:00	3:00	3:00	2:49	3:00	11:00	11:00	10:47	11:00	7:00	7:01	Mar. 22, 1941
6:47			3:10	2:53			11:01	10:49			7:02	
6:51			3:00	2:49			11:01	10:51			7:01	
6:46			3:06	2:50			11:01	10:49			7:02	
6:49	7:00	3:00	3:05	2:51	3:00	11:00	11:00	10:48	11:00	7:00	7:04	Mar. 23, 1941
6:50			3:05	2:48			11:00	10:48			7:04	
6:50			3:01	2:48			11:00	10:48			7:06	
6:46			3:03	2:46			11:00	10:48			7:06	
6:48	7:00	3:00	3:03	2:46	3:00	11:00	11:04	10:48	11:00	7:00	7:03	Mar. 24, 1941
6:49			3:03	2:49			11:02	10:48			7:10	
6:47			3:04	2:47			11:02	10:48			7:06	
6:51			3:01	2:49			11:04	10:49			7:06	

Exhibit 101 and 101-A

Tr. 3290; R. 1385

Analysis of Working Hours and Time Clock Records of Pressmen in Slip House.
Reproduce in Full.

Defendant's Exhibit 101

ANALYSIS OF WORKING HOURS AND TIME-CLOCK RECORDS OF PRESSMEN IN SLIP HOUSE FOR PAY PERIOD ENDING MAY 21, 1940

Date	Beginning and End of Shift	Punch In		Punch Out	
Wed. May 8, 1940	5:00 AM— 1:00 PM	4:47	4:47	1:05	1:06
Thurs. May 9, 1940	5:00 — 1:00	4:46	4:46	1:06	1:06
Fri. May 10, 1940	5:00 — 1:00	4:46	4:46	1:09	1:09
Mon. May 13, 1940	5:00 — 1:00	4:46	4:46	1:07	1:07
Tues. May 14, 1940	5:00 — 1:00	4:47	4:47	1:06	1:06
Wed. May 8, 1940	1:00 PM— 9:00 PM	12:47	12:48	9:00	9:00
Thurs. May 9, 1940	1:00 — 9:00	12:48	12:46	9:01	9:01
Fri. May 10, 1940	1:00 — 9:00	12:50	12:46	9:07	9:07
Mon. May 13, 1940	1:00 — 9:00	12:48	12:48	9:05	9:05
Tues. May 14, 1940	1:00 — 9:00	12:50	8:52	9:04	3:00
	9:00 PM— 3:00 AM				
Wed. May 8, 1940	9:00 PM— 5:00 AM	8:48	8:48	5:06	5:06
Thurs. May 9, 1940	9:00 — 5:00	8:46	8:47	5:03	5:03
Fri. May 10, 1940	9:00 — 5:30	8:46	8:46	5:34	5:35
Mon. May 13, 1940	9:00 — 3:30	8:52	8:47	3:41	3:31
Tues. May 14, 1940	9:00 — 3:00	8:52	12:46	3:00	9:04
	1:00 — 9:00 PM				
Wed. May 15, 1940	5:00 AM— 1:00 PM	4:48	4:48	1:07	1:08
Thurs. May 16, 1940	5:00 — 1:00	4:48	4:47	1:07	1:07
Fri. May 17, 1940	5:00 — 1:00	4:46	4:47	1:08	1:08
Mon. May 20, 1940	1:00 PM— 9:00	12:46	12:46	9:06	9:06
Tues. May 21, 1940	1:00 — 9:00	12:46	12:46	9:05	9:05
Wed. May 15, 1940	1:00 PM— 9:00 PM	12:49	12:49	9:05	9:05
Thurs. May 16, 1940	1:00 — 9:00	12:48	12:48	9:01	9:01
Fri. May 17, 1940	1:00 — 9:00	12:48	12:48	9:02	9:02
Mon. May 20, 1940	9:00 — 4:30 AM	8:48	8:48	4:32	4:32
Tues. May 21, 1940	9:00 — 2:45	8:48	8:48	2:47	2:48

Wed.	May 15, 1940	9:00 PM— 5:00 AM	8:50	8:47	5:07	5:07
Thurs	May 16, 1940	9:00 — 4:15	8:53	8:49	4:26	4:26
Fri.	May 17, 1940	9:00 — 2:00	8:46	8:46	2:06	2:06
Mon.	May 20, 1940	5:00 AM—12:45 PM	4:46	4:46	12:59	12:59
Tues.	May 21, 1940	5:00 — 1:00	4:46	4:46	1:02	1:02

Defendant's Exhibit 101-A

ANALYSIS OF WORKING HOURS AND TIME-CLOCK RECORDS OF PRESSMEN IN SLIP HOUSE FOR PAY PERIOD ENDING DECEMBER 3, 1940

Date	Beginning and End of Shift	Punch In		Punch Out	
Wed. Nov. 20, 1940	5:00 AM—12:30 PM	4:47	4:47	12:41	12:41
Fri. Nov. 22, 1940	5:00 —12:30	4:47	4:47	12:43	12:43
Sat. Nov. 23, 1940	5:00 — 1:00	4:46	4:46	1:06	1:06
Mon. Nov. 25, 1940	5:00 —12:30	4:47	4:47	12:43	12:43
Tues. Nov. 26, 1940	5:00 —12:30	4:46	4:46	12:34	12:34
Wed. Nov. 20, 1940	1:00 PM— 9:00 PM	12:47	12:48	9:01	9:01
Fri. Nov. 22, 1940	1:00 — 8:45	12:46	12:46	8:49	8:49
Sat. Nov. 23, 1940	1:00 — 8:45	12:46	12:46	8:56	8:56
Mon. Nov. 25, 1940	1:00 — 9:00	12:50	12:49	9:02	9:01
Tues. Nov. 26, 1940	1:00 — 9:00	12:46	12:49	9:01	9:01
Wed. Nov. 20, 1940	9:00 PM— 5:00 AM	8:46	8:46	5:09	5:09
Fri. Nov. 22, 1940	9:00 — 4:45	8:46	8:46	4:57	4:57
Sat. Nov. 23, 1940	9:00 — 4:30	8:46	8:46	4:42	4:42
Mon. Nov. 25, 1940	9:00 — 4:45	8:51	8:51	4:57	4:57
Tues. Nov. 26, 1940	9:00 — 4:30	8:47	8:47	4:34	4:33
Wed. Nov. 27, 1940	5:00 AM—12:30 PM	4:47	4:47	12:34	12:34
Thurs. Nov. 28, 1940	5:00 —12:30	4:46	4:46	12:41	12:41
Fri. Nov. 29, 1940	5:00 — 1:00	4:46	4:46	1:12	1:12
Mon. Dec. 2, 1940	1:00 — 9:00	12:48	12:48	9:08	9:08
Tues. Dec. 3, 1940	1:00 — 9:00	12:47	12:47	9:08	9:08
Wed. Nov. 27, 1940	1:00 PM— 9:00 PM	12:47	12:47	9:01	9:01
Thurs. Nov. 28, 1940	1:00 — 9:00	12:50	12:47	9:08	9:08
Fri. Nov. 29, 1940	1:00 — 9:00	12:47	12:47	9:08	9:07
Mon. Dec. 2, 1940	9:00 — 5:00 AM	8:47	8:46	5:01	5:01
Tues. Dec. 3, 1940	9:00 — 5:00	8:55	8:56	5:01	5:01
Wed. Nov. 27, 1940	9:00 — 5:00	8:47	8:47	5:05	5:05
Thurs. Nov. 28, 1940	9:00 — 5:00	8:46	8:46	5:09	5:09
Fri. Nov. 29, 1940	9:00 — 5:15	8:51	8:51	5:19	5:19
Mon. Dec. 2, 1940	5:00 AM— 1:00 PM	4:47	4:47	1:00	1:00
Tues. Dec. 3, 1940	5:15 — 1:00	5:12	5:12	1:09	1:09

Exhibit 102

Tr. 3295; R. 1391

Analysis of Minimum Idle Time Spent in Plant by Boiler Firemen Before and After Work.
Reproduce in Full.

DEFENDANT'S EXHIBIT 102

ANALYSIS OF MINIMUM IDLE TIME SPENT IN PLANT BY BOILER FIREMEN BEFORE AND AFTER WORK

Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Punch In	Shift Began	Shift Ended	Punch Out	Date
	A.M.	P.M.			P.M.	P.M.			P.M.	A.M.		
6:53	7:00	3:00	3:07	2:46	3:00	11:00	11:01	10:50	11:00	7:00	7:06	Oct. 23, 1940
6:52	"	"	3:05	2:52	"	"	11:05	10:46	"	"	7:10	Nov. 6, 1940
6:49	"	"	3:05	2:46	"	"	11:02	10:50	"	"	7:04	Nov. 20, 1940
6:51	"	"	3:09	2:49	"	"	11:07	10:50	"	"	7:06	Dec. 4, 1940
6:51	"	"	3:04	2:50	"	"	11:04	10:52	"	"	7:06	Dec. 18, 1940
6:50	"	"	3:08	2:53	"	"	11:05	10:46	"	"	7:05	Dec. 29, 1940
6:54	"	"	3:07	2:46	"	"	11:03	10:50	"	"	7:07	Jan. 15, 1941
6:51	"	"	3:10	2:49	"	"	11:06	10:47	"	"	7:06	Jan. 29, 1941
6:55	"	"	3:06	2:46	"	"	11:01	10:50	"	"	7:06	Feb. 12, 1941
6:50	"	"	3:08	2:47	"	"	11:07	10:48	"	"	7:04	Feb. 26, 1941
6:55	"	"	3:05	2:56	"	"	11:01	10:49	"	"	7:06	Mar. 12, 1941
6:50	"	"	3:05	2:50	"	"	11:02	10:47	"	"	7:04	Mar. 26, 1941
6:52	"	"	3:08	2:48	"	"	11:01	10:48	"	"	7:10	Apr. 9, 1941

Exhibit 103 and 103-B

Tr. 3406; R. 1436

Invoices from Divers Sponge Company of Cleveland to Mt. Clemens Pottery Company covering R. I. Wool Form Sponges. One Invoice for 650 pieces at 26¢ each and the other for 1,000 pieces at 26¢ each.

Exhibit 104

Tr. 3406; R. 1437

Invoice from Welton Rubber Company of Detroit to Mt. Clemens Pottery Company, dated April 7, 1941, covering six dozen pair rubber gloves at $2.70 per dozen, subject to 2% cash discount, f.o.b. Detroit.

Another invoice of same date and on same terms covering 12 dozen pair gloves at $2.70 per dozen.

Exhibit 105

Tr. 3406; R. 1437

Invoice from Divers Sponge Company of Cleveland to Mt. Clemens Pottery Company, Dated April 1, 1941, covering Wool Form Sponges at 35¢ each, freight prepaid.

Exhibit 106

Tr. 3406; R. 1437

Invoice from Divers Sponge Company of Cleveland to Mt. Clemens Pottery Company, dated October 17, 1940, covering Wool Form Sponges at 25¢ each, freight prepaid.

Exhibit 107 A-B

Tr. 3406; R. 1437

Invoices from Divers Sponge Company to Mt. Clemens Pottery Company, one dated August 2, 1940, covering R. I. Form Sponges at 22¢, freight prepaid; the other dated August 21, 1940, covering Grass Sponges at 19¢ each, freight prepaid.

Exhibit 108

Tr. 3406; R. 1437

Invoice from Divers Sponge Company of Cleveland to Mt. Clemens Pottery Company, dated July 15, 1940, covering R. I. Form Sponges at 20¢ each, subject to 2% cash discount, freight prepaid.

Exhibit 109

Tr. 3406; R. 1437

Invoice from Divers Sponge Company of Cleveland to Mt. Clemens Pottery Company, dated November 30, 1939, covering R. I. Wool Form Sponges at 26¢ each and 20¢ each, freight prepaid.

Exhibit 110

Tr. 3406; R. 1438

Invoice of Reeves Steel & Mfg. Company of Dover, Ohio, to Mt. Clemens Pottery Company, dated December 27, 1940, covering Water Pails, some at $4.88 a dozen and some at $2.50 a dozen, f.o.b. Dover—freight allowed, subject to 2% cash discount.

Exhibit 111

Tr. 3440; R. 1449

Certified Copies of Petition and Affidavit in Attachment.

Case No. 159,790, Common Pleas Court, Lucas County, Ohio.

Reproduce in Full.

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

No. 159790

Eric Sopha,
160 Barbara Street, Mt. Clemens, Michigan,
Alice Stoll,
136 Grand Ave., Mt. Clemens, Michigan,
Esther Klein,
187 North Gratiot, Mt. Clemens, Michigan,
Andrew Hirsner;
Mt. Clemens, Michigan,
Mary Corby,
406 E. Main St., Mt. Clemens, Michigan,
Hiram Stroup,
406 Hamon St., Mt. Clemens, Michigan,
Virginia Weier,
105 Elizabeth St., Mt. Clemens, Michigan,
Carl Starner,
Mt. Clemens, Michigan,
Robert Fitton,
Mt. Clemens, Michigan,
Helen Stade,
Mt. Clemens, Michigan,
Arthur Dobberowsky,
Mt. Clemens, Michigan,
Norman Engelbrecht,
Mt. Clemens, Michigan,

Plaintiffs,

vs.

The Mt. Clemens Pottery Co.,
Rose and Church Streets,
Mt. Clemens, Michigan,

Defendant.

PETITION

I.

Come now the plaintiffs herein and state that each is an employee of The Mt. Clemens Pottery Company, defendant herein; that the Mt. Clemens Pottery Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal place of business at Mt. Clemens, Michigan.

II.

Plaintiffs further state that each is now and has been an employee of The Mt. Clemens Pottery Company and that each has claims accruing for overtime compensation against the defendant, The Mt. Clemens Pottery Company, by virtue of the Fair Labor Standards Act of 1938, 29 U.S.C.A. 216 (b), hereinafter referred to as the Act.

III.

Plaintiffs further state that since on or about October 24, 1938, the effective date of said Act, the defendant, The Mt. Clemens Pottery Company, has been violating the provisions of said Act, including Section 7 (a) of said Act.

IV.

Plaintiffs further allege that the said Mt. Clemens Pottery Company employs approximately 1250 employees each of whom, including these plaintiffs, are engaged in manufacturing, handling, packing and distributing pottery and other clay products shipped in interstate com-

merce. Plaintiffs further allege that almost all of the raw materials used by said corporation are purchased in North Carolina, Georgia and other States outside the State of Michigan; that lead, silicia, first and other ingredients used by the defendant, The Mt. Clemens Pottery Company, in the manufacture of these products, are purchased in Missouri and other States of the United States and that approximately 85% of the finished products of said corporation are sold and distributed in interstate commerce outside the State of Michigan.

V.

Plaintiffs further state that since October 24, 1938, said Mt. Clemens Pottery Company worked its employees in violation of said Act for periods exceeding 44 hours a week without paying said employees overtime compensation as provided for in the aforesaid Act. That there is now due and owing said employees from the period of October 24, 1938, to October 24, 1939, pay for the hours worked in excess of said 44 hours per week and that plaintiffs are enfitled to equal amounts as liquidated damages, all as more fully set forth in Section 16 (b) of said Act. Plaintiffs further state that after October 24, 1939, the maximum number of working hours of employees, such as the plaintiffs herein, was reduced by said Act to 42 hours and that the defendant company in violation of said Act has been working its employees in excess of 42 hours in each of said weeks since October 24, 1939, and that there is due and owing said plaintiffs pay for hours worked overtime in excess of said statutory limitations as well as liquidated damages in an equal amount, all as set forth in Section 16 (b) of said Act.

VI.

Plaintiffs further state that since October 24, 1939, said Act required employers, such as the defendant herein, The Mt. Clemens Pottery Company, to pay overtime com-

pensation for hours worked in excess of 40 hours. That the plaintiffs herein have worked in excess of 45 hours a week since October 24, 1940, and that there is due and owing said plaintiffs pay for said hours worked over time in excess of said statutory limitations as well as liquidated damages in an equal amount, all as set forth in Section 16 (b) of said Act.

VII.

Plaintiffs further state that each of them worked on either a piece work, a bonus or upon an hourly rate basis. Plaintiffs state that by reason of the provisions of said Act said defendant has been required to pay employees a minimum of 30¢ an hour since October 24, 1939, but that certain plaintiffs, including the plaintiff, Alice Stoff and others, were not paid said statutory minimum wage of 30¢ per hour as provided for in said Act. That female employees in the Decorating Department of said defendant company were required to and did work for each week several hours in cutting patterns or "print" for which said employees, although engaged in labor for the defendant, received no compensation. Plaintiffs state that said employees have had deductions made from their wages for brushes, sponges, gloves and carrying devices used for and in behalf of said employer and that said deductions from the wages of said employees were unauthorized and in contravention of the provisions of said Act and the rulings of the Administrator thereof.

Plaintiffs further state that said employees, including the female plaintiffs herein, were required to serve a period of ten weeks, during which time 10% was deducted from their pay and that payments made to said female plaintiffs were, as a result thereof, less than the minimum set forth in the said Act.

VIII.

Plaintiffs further state that the defendant, The Mt. Clemens Pottery Company, does not pay its employees

for the hours worked in accordance with the time shown on the time cards of each of said plaintiffs. Plaintiffs state that said employees have as much as 56 minutes a day deducted from the time shown on said time cards. Plaintiffs state that the defendant, The Mt. Clemens Pottery Company, deliberately falsified the computations of hours worked as shown by said time cards. Said Company deducts from the time worked by each of said employees all time prior to the quarter hours wherein said employee reports for work in the morning, so that an employee who reports and begins work at 6:46 A. M. is credited only with working from 7:00 A. M. When the same employee checks out for lunch at 12:14, the company when paying said employee pays him only for work up to 12 noon. When said employee reports back from lunch at 12:46 P. M., the company only pays him for time worked from 1:00 P. M., and when said employee reports out at 4:29 P. M., the company only pays him for work up to 4:15 P. M. Said situation is true of every time card of every employee of The Mt. Clemens Pottery Company, including these plaintiffs.

Said company does not pay said employees for setting up machines for themselves and other employees and that these plaintiffs, particularly those in the Clay Shop, are required to spend as much as from three to eight hours a week setting up the molds and maintaining or repairing the company's machines for which work said plaintiffs received no pay.

Plaintiffs state that employees in the Slip Room are required to work from three to five hours every Friday night cleaning said machinery, for which time said employees, including these plaintiffs, are not paid. Plaintiffs further state that employees, including plaintiff Robert Fitton and others, were required by the company foreman to punch time clocks out and then return to work to finish oiling molds and other work, which time was not recorded on time cards maintained by said company.

Plaintiffs state that they have not been compensated for the work performed in excess of the hours shown on the time cards, vouchers and payroll slips; that they have been required to perform work for said defendant, The Mt. Clemens Pottery Company, for time which is not shown on said time cards and that said plaintiffs have owing them unpaid overtime compensation; that said defendant, The Mt. Clemens Pottery Company, has not paid the plaintiffs as aforesaid the minimum wages required by said Act. That the plaintiffs are engaged in the Clay Shops, in the Dipping Departments, Decorating Rooms, Packing and Shipping Sheds, the Slip-off and other Departments of the defendant herein and includes kiln operators, decal, pattern cutters and others who load, unload, pack, handle, process, manufacture, ship and transport the products of the defendant herein for interstate commerce.

IX.

Plaintiffs further allege that they are not informed as to the exact amount of hours worked overtime by each of the said plaintiffs or the minimum wages still due and owing for hours worked as aforesaid in violation of the aforesaid Fair Labor Standards Act of 1938.

X.

Plaintiffs allege that information concerning the hours worked overtime, the unauthorized deductions from the wages made as aforesaid, and the minimum wages still owing said plaintiffs is in the exclusive possession of the defendant. That interrogatories are attached hereto which plaintiffs respectfully ask the Court to compel the defendant, The Mt. Clemens Pottery Company, to answer.

Plaintiffs are informed and so allege the fact to be that there is in excess of $40,000.00 due and owing to the employees of the defendant aforesaid for overtime rendered by said employees in violation of the Fair Labor

Standards Act of 1938 and for wages not paid in accordance with the minimum standard of wages set up in said Act.

Plaintiffs further state that by reason of the aforesaid acts of the defendant, The Mt. Clemens Pottery Company, plaintiffs are entitled to the sum of $40,000.00 and for an additional amount as liquidated damages, all as provided for in said Act.

Wherefore, Plaintiffs pray that the Court enter judgment herein in the amount of $40,000.00 and that the plaintiffs may be awarded an additional amount as liquidated damages; that the plaintiffs may have their Court costs including reasonable attorney fees for plaintiffs' counsel and that they may have such other and further relief as is just and proper in the premises; that the defendant, The Mt. Clemens Pottery Company, be ordered to answer the interrogatories herein annexed.

Edward Lamb,
Attorney for Plaintiffs,
1014 Edison Bldg., Toledo, Ohio

State of Ohio,
Lucas County—ss.

Edward Lamb, being first duly sworn, says that he is attorney of record for the plaintiffs herein who are absent from the County of Lucas and that the facts stated and allegations contained in the foregoing pleading are within his personal knowledge, and are, as he believes, true.

Edward Lamb

Sworn to before me and subscribed in my presence this 5th day of December, 1941.

Lowell Goerlich,
Notary Public, Lucas County, Ohio.
(Seal)

INTERROGATORIES

The following interrogatories are annexed to the foregoing petition to be answered by the defendant as prayed for in the petition:

First Interrogatory:

Give the names, addresses and social security numbers of all the plaintiffs herein, together with records of hours worked and wages paid to the same since October 24, 1938.

Answer:

Second Interrogatory:

Give the names and addresses of customers of said Mt. Clemens Pottery Company and furnish copies of invoices or other records showing extent and volume of sales and purchases in Ohio, Michigan and elsewhere, from October 24, 1938, to December 3, 1941.

Answer:

Third Interrogatory:

Does the Mt. Clemens Pottery Company pay said employees for the hours and minutes worked as revealed by the time cards maintained by said company?

Answer:

Fourth Interrogatory:

Does said Mt. Clemens Pottery Company keep duplicate or two sets of time records?

Answer:

Fifth Interrogatory:

Has the Mt. Clemens Pottery Company kept its wage and hour records since October 24, 1939? Has said com-

pany destroyed any such records, and if so give time and place.

Answer:

Sixth Interrogatory:

Has said Mt. Clemens Pottery Company made restitution of any unpaid minimum wages or overtime compensation, and if so, give dates persons receiving the same, and amount thereof.

Seventh Interrogatory:

Have deductions been made from the wages of any plaintiffs herein for sponges, carriers, gloves or other equipment? Give dates and amounts thereof and names of persons affected. Have plaintiffs, or any of them, been compelled to work in changing or oiling molds, maintaining machinery or doing other work for which they were not paid?

Answer:

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

No. 159790

Eric Sopha,
160 Barbara Street, Mt. Clemens, Michigan,
Alice Stoll,
136 Grand Ave., Mt. Clemens, Michigan,
Esther Klein, et al.,
187 North Gratiot, Mt. Clemens, Michigan,
Plaintiffs,

vs.

The Mt. Clemens Pottery Co.,
Rose and Church Streets,
Mt. Clemens, Michigan,
Defendant.

AFFIDAVIT IN ATTACHMENT AND TO OBTAIN ORDER OF GARNISHMENT

State of Ohio,
County of Lucas—ss.

Edward Lamb, being first duly sworn, deposes and says that he is the attorney of record for the plaintiffs in this cause and that said plaintiffs are commencing a civil action in this Court against the defendant, The Mt. Clemens Pottery Company, a foreign corporation, for the recovery of compensation for overtime worked for said defendant in the amount of $40,000.00 with interest at the rate of 6% from December 3, 1941, together with costs and attorney fees. That said claim is one for work and labor and arises upon a contract of employment. That said defendant is a foreign corporation, not exempt by law from attachment, and is not a resident of this State. That the property sought to be attached is not exempt from execution, attachment of sale to satisfy a judgment or order. That said claim be just and affiant believes plaintiffs should recover the amount of $40,000.00 with

interest at the rate of 6% from December 3, 1941, and costs and attorney fees; and that the facts set forth in this affidavit are true.

Affiant further says that he has good reasons to believe and does believe that the S. S. Kresge Company, 301 Summit Street, Toledo, Ohio, has property of the defendant, Mt. Clemens Pottery Company, in its possession consisting of money due and to become due on account of goods sold to it by said defendant and that said S. S. Kresge Company should receive notice of garnishment herein.

And also command the Sheriff to notify the said S. S. Kresge Company, 301 Summit Street, Toledo, Ohio, that it has been garnished and is required to answer herein.

Edward Lamb.

Sworn to before me and subscribed in my presence this 5th day of December, 1941.

Lowell Goerlich,
Notary Public, Lucas County, Ohio.

(Seal)

The State of Ohio,
Lucas County—ss.

I, Wm. F. Renz, Clerk of the Court of Common Pleas, within and for the County of Lucas, and State of Ohio, do hereby certify the foregoing to be true and correct copies of the Petition and Affidavit in Attachment and to Obtain Order of Garnishment, filed in my office on the 6th day of December, 1941, in the above entitled cause.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court at Toledo, Ohio, this 6th day of February, A. D. 1942.

Wm. F. Renz, Clerk.
Margaret Bruggemeier, Deputy.

[Seal]

Exhibit 112

Tr. 3489; R. 1466

Received only as part of separate record of excluded testimony. Decree of the Circuit Court for the County of Macomb, State of Michigan, in Case 12,066, Mt. Clemens Pottery Company v. United Pottery Workers, et al., enjoining various types of misconduct, such as intimidating employees, preventing access to plaintiffs' premises, etc., and limiting picketing to a group of eight men.

Original Exhibit Transmitted to Appellate Court as part of Separate Record of Excluded Testimony.

Exhibit 113

Tr. 3501; R. 1471

Inspection Field Letter No. 27 of the Wage Hour Division of the U. S. Department of Labor.

Reproduce in Full.

WAGE AND HOUR DIVISON
U. S. DEPARTMENT OF LABOR

INSPECTION FIELD LETTER No. 27
SUBJECT: Time Spent in Establishments Before or After Regular Working Hours

1. Where employees enter their places of employment a short period of time (15 or 20 minutes) before the regular starting time and do so solely for their own convenience and not because they are required or expected to do so by the employer, such periods shall not be considered time worked if the employees do not actually perform any work during the period.

2. Similarly, where employees remain at their places of employment for short periods (15 or 20 minutes) at the end of the day solely for their own convenience and not because they are required or expected to do so by the employer, such periods shall not be considered working time if the employees do not actually perform any work during the period.

3. It should be noted that an employee is engaged in work during either type of period if he prepared or handles materials, cleans machinery, or aids in any other way in the production of goods.

4. It is the duty of the inspector in all such cases to determine whether or not employees are engaged in performing work during such periods. The determination should be made on the basis of an adequate number of employee interviews together with any further investigation which is necessary to establish the facts of the situation.

Issued 6-14-40. (4772)

The foregoing is a correct copy of Inspection Field Letter No. 27 issued to the inspection staff of the Wage and Hour Division as a statement of the enforcement policy of the Division. It does not purport to be an interpretation of any provision of the Fair Labor Standards Act. The enforcement policy and the legal interpretations of the Division are not binding on the courts, of course, in judicial proceedings brought pursuant to section 16(b) of the Act or otherwise.

L. Metcalfe Walling,
Administrator, Wage & Hour Division
United States Department of Labor.

Dated at New York, N. Y.
This 27th day of
May 1942.

ORDER EXTENDING TIME TO FILE RECORD ON APPEAL

(Filed Oct. 9, 1944)

At a session of said Court held in the Federal Building, Detroit, Michigan, on the 9th day of October, 1944.

Present: Hon. Frank A. Picard, District Judge.

On reading and filing the petition of the defendant Mt. Clemens Pottery Company for an extension of time to file the record on appeal, and on consideration thereof,

It Is Hereby Ordered that the time for filing the record on appeal in this case in the Circuit Court of Appeals shall be and the same is hereby extended to and including December 7th, 1944.

Frank A. Picard,
District Judge.

STIPULATION AS TO TRANSCRIPT AND EXHIBITS

(Filed Oct. 30, 1944)

It is hereby stipulated by and between all the parties to the above entitled cause, through their respective attorneys, as follows:

Whereas, the original typewritten transcript of testimony and the original exhibits in the above entitled cause have been filed with the Clerk of the United States Dis-

trict Court for the Eastern District of Michigan, Southern Division, for transmission to the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit as a part of the record in said cause; and

Whereas, certain minor portions of the testimony and certain exhibits have not been designated for printing in full but have been in part omitted from the printed record or reproduced therein in condensed form.

It is therefore stipulated and agreed that counsel for any party may either in their briefs or in oral argument make citations either to pages of the original transcript or to original exhibits in the event that any such citation should be necessitated by reason of the omission from the printed record herein of any such transcript pages or exhibits.

Albert E. Meder,
Frank E. Cooper,
Bert V. Nunneley,
Beaumont, Smith & Harris,
Of Counsel,
Attorneys for Appellant.
By Frank E. Cooper.

Edward Lamb,
Lowell Goerlich,
Attorneys for Appellees.
By Edward Lamb.

Dated this 27th day of
October, 1944.

CERTIFICATE OF CLERK

United States of America,
Eastern District of Michigan—ss.

I, George M. Read, Clerk of the United States District Court for said District, do hereby certify that the within and foregoing pages numbered 1 to 1583 inclusive contain a full and complete copy of all papers filed and all proceedings had in said cause, in accordance with the designation of attorneys for appellant as to contents of Record on Appeal (the attorneys for appellees not having filed a designation), as the same appears on file and of record in this office; that I have caused the same to be compared with the originals, and that the within and foregoing is a true and correct transcript therefrom and of the whole thereof as designated. Pursuant to the order of the District Court and the stipulation of counsel (appearing respectively at pp. 312 and 1582 hereinabove) the original exhibits and the entire typewritten transcript of testimony are to be separately transmitted to the Circuit Court of Appeals as a part of the record in said cause.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said District, this ..... day of ....., A. D. 1944.

George M. Read, Clerk
United States District Court,
Eastern District of Michigan.

By .....
Deputy Clerk.

PROCEEDINGS IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED

(April 5, 1945—Before HICKS, HAMILTON and MARTIN, JJ.)

This cause is argued by Frank E. Cooper and Bert V. Nunneley for Appellant and by Edward Lamb for Appellees and is submitted to the Court.

JUDGMENT

(Entered May 21, 1945)

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the cause of action is ordered dismissed.

OPINION

(Filed May 21, 1945)

Before HICKS, HAMILTON and MARTIN, Circuit Judges.

MARTIN, Circuit Judge. A local CIO union and seven of its members, suing on behalf of all similarly situated employees, brought this action against the appellant employer, charging violations of the Fair Labor Standards Act (52 Stat. 1060, 29 U. S. C. A., Sections 201-219) in numerous respects. Approximately 300 employees or ex-employees of appellant were permitted, by order of the district court, to sign and file designations authorizing the plaintiffs to represent them.

The appellant corporation for twenty-eight years has operated a pottery plant at Mt. Clemens, Michigan; and during the period with which we are concerned, employed some 1,000 to 1,200 individuals. The original complaint, which was filed a few days after an organizational strike had been instituted by the union at the pottery plant, charged among other things that the time clocks of the company had been so rigged or "doctored" that the figures punched on the cards failed to reflect correctly the actual time at which the card was punched. This charge was abandoned and, in lieu, the charge was made that the employer did not compute the working time of the employees, or pay them, in accordance with the time-card records. The complaint further charged that the employees were worked by the company 45 hours a week from late in October, 1938, until the action was filed. There was no proof made to support the charges of the complaint that certain employees performed home-work without compensation or that certain employees earned less than thirty cents an hour. Numerous motions were made and other preliminary steps taken, resulting in the filing by plaintiffs of two bills of particulars.

It was charged by plaintiffs that the company had credited employees with working time only from the succeeding quarter hour when an employee checked in to the preceding quarter hour when he checked out; and that under this practice the company "has deducted from the time worked, as shown on said time cards, a period of as much as 56 minutes each day."

Numerous new charges were made and dropped and numerous motions were made and acted upon which it is immaterial to detail.

The district judge finally referred the cause to a special master to hear the parties, to take testimony with respect to the issues as framed by the pleadings, and to report his findings of fact and conclusions of law.

The lengthy proceedings before the master were recorded in a typewritten transcript comprising more than 3500 pages. During the course of the procedure before the master charges not set up in the pleadings were made by the plaintiffs, including claims that office workers were not compensated in accordance with the Act, that the company had violated the child labor provisions thereof, and that company meetings were held without crediting the employees with the time spent in attendance. The master held that, in the absence of amendment of the pleadings, testimony would not be received upon such issues.

The evidence adduced before the master consisted largely of testimony of eight union employees or former employees of the company on behalf of the plaintiffs, while the testimony offered by the pottery company was primarily that of its foremen and managerial representatives. Each side introduced expert testimony as to industrial customs and practices; and an inspector of the Wage and Hour Division of the United States Department of Labor testified for the plaintiffs.

The special master reported that the employees involved in the case were engaged in the production of goods for commerce within the meaning of the Fair Labor Standards Act; that the plaintiffs were not estopped to maintain the action by reason of acquiescence for a long time in the practices of the company with respect to the computation of time; that the prior inspection of the plant by the Wage and Hour Division was irrelevant upon the issues in suit; and that the defense of lack of authority of the union to sue was invalid. He recognized that employees subject to the provisions of the Fair Labor Standards Act are entitled to receive full payment for the time they have worked in excess of its limited statutory period

at a rate not less than time and one-half for the extra time worked.

The master stated that, while legal questions as to what constitutes working time were involved, the principle issue is factual. He found that the pottery company employs an average of approximately 1200 persons in ten or twelve departments, of which only four, the clay shop, brushing and dipping, glost belt and decorating departments, were directly represented by the witnesses who had testified for the plaintiffs. He found further that more than 95% of the employees in the plant, who are engaged in production work, are compensated upon a piece work basis; that the rate of pay is generally based upon the output of a group or a crew, but in departments where employees work individually the rate is based upon the output of the individual; and that the pottery company operates generally on a five-day week, the departments variously operating from one to three shifts per day; with shifts in the different departments beginning at different times during the morning, although the established starting time was always on an even quarter hour. The bisque and glost kiln departments operated on a three-shift seven-day basis.

The pottery plant covers more than eight acres of ground, the employees' entrance being at the northeast corner immediately adjacent to which are cloak and toilet rooms for men and women. Upon entering the production part of the plant, an employee must pass and punch a time clock. There were two time clocks placed at different locations in the plant, a third one having been added shortly before the commencement of this action. In checking in and out at the clocks, the employee removes his card from the rack, places it in a slot, pushes down a hand lever, and removes the card with the time recorded on it. He then places the card in another rack. An average of 25 employees a minute can check in and out in this manner. After punching the time clock, the employees proceed by somewhat defined aisles to their particular places of work. The distance from the time clock to the place of work varies from 130 to 325 feet in the glost kilns to 820 or 890 feet in the mold department.

Opinion

The master found further that the time clock system was first installed by the company in 1933; and that employees are not permitted to punch their cards more than fourteen minutes prior to the time which the company designates as starting time. For computation of time worked by the employees, the time cards are removed from the racks and the time is calculated from the succeeding even quarter hour after employees ring in, to the quarter hour immediately preceding the time when they punch out. For example, an employee whose card is punched in at 6:46 A. M., punched out at 12:03 P. M., punched in at 12:50 P. M., and punched out again at 4:07 P. M., is credited with 8 hours' working time. The resultant figure is entered on the card in the righthand column and the card is returned to the rack. In computing overtime pay under the Fair Labor Standards Act the method employed by the company is to divide the gross pay received by the employee in each work week by the number of hours credited to him, and the resultant average hourly rate is multiplied by time and half for the overtime hours. This method conforms to the system prescribed by the Wage and Hour Division of the Department of Labor.

Because the shifts in the different departments commenced at different times in the morning, no whistle signalized the commencement of work on most shifts, but clocks belonging to the company or to employees were distributed freely throughout the plant. Whistles were blown, however, at 6:55 and 7:00 A. M., as the most commonly established starting time in the morning. Whistles were also blown at several other times during the day.

The policy of the company, put into effect through the operation of the Fair Labor Standards Act, was to keep the working hours of its employees below the statutory limitation for payment of straight time as far as possible. Before the passage of the Act, the company had been officially on a forty-five hour week, but lay-offs during that period had reduced the working hours of employees to less than forty-five.

The matter of compliance with the Act was frequently discussed at weekly meetings of foremen; and employees were informed of the policy adopted by the company and were instructed, when possible, to keep their hours below the statutory period.

Practically all the workmen in the plant had certain preliminary duties to perform, after arriving at their respective departments and before commencing production work, such as putting on their aprons or overalls, removing their shirts, taping or greasing their arms and putting on finger cots, and preparing equipment for commencement of production work by turning on switches for lights and machinery, opening windows and assembling and sharpening tools. The nature of this work varied from department to department, and from job to job within the department.

The master reviewed at length the evidence introduced with respect to the working time of the employees. It was pointed out that the foremen had testified that the employees were not instructed to report for work at fourteen minutes to starting time, but rather at such time as to be in their respective departments ready for work at the even quarter hour set for the start of the shift, and that they could ring in at any time after "14 to." They testified further that production work was not commenced until the established starting time, except in rare instances where employees may have "jumped the gun" a minute or two, and that frequently, where a crew had to be assembled, work was not commenced until considerably after starting time. It was conceded that in order for employees to be in their departments ready for work by starting time, it was necessary for them to punch the time clocks some minutes before starting time. The time consumed by the employees in walking from time clocks to the departments was not treated by the company as working time. None of the estimates of the time consumed by employees in reaching their departments, ranging from one and one-half to three minutes, was based upon actual clocking of the time in transit.

The testimony was conflicting concerning the extent of

the personal activities of the employees prior to commencing work. Witnesses for the company testified that most of an employee's time, after he had arrived in a department in advance of regular starting time, was spent in conversation or personal activities not connected with his work. The master stated in his report that there was practically no direct testimony by the witnesses for the plaintiffs as to their procedure when going out for lunch, returning therefrom and when leaving at the end of a shift; but that, on cross-examination, several had admitted that they did not work fourteen minutes beyond quitting time, but on the contrary frequently stopped production and cleaned up before quitting time. Such testimony was in line with that of the foremen. The time card exhibits reveal that the employees came in at practically uniform rate during the first seven minutes that the clocks were open, and that by five minutes to 7:00 o'clock 95% of the employees had rung in. In three of the four departments concerning which testimony was offered, employees worked in groups; and production work could not be commenced until the entire group had arrived.

The master found that the proof demonstrated that no practice existed of working the employees of the pottery company fourteen minutes after quitting time for lunch or at the end of a shift. More difficulty was found in passing upon the claims of the plaintiffs that all time between punched entries on the cards was working time. In appraising the evidence, both direct and circumstantial, the master concluded that the plaintiffs had not carried the burden of proof on the issue.

The master rationalized upon the proven facts and circumstances in arriving at this conclusion. He did so upon a consideration of pertinent authorities. He stated that a computation of overtime on the basis of a finding that the employees worked more than the time credited to them, but less than the time shown by the entries on the cards would, on the record in the case, be speculative, inasmuch as the witnesses for the plaintiffs had kept no record of their time and admitted that, apart from the time clock cards, they could not tell on any particular

day when they arrived at their departments or commenced preliminary work. The time consumed in preliminary activities varied in each department and in the same department on different days.

The master found that the evidence did not bear out that women employees were paid sub-minimum wages. He found no violation of the Wage and Hour Act in respect of deductions for tools or for the "invisible man." The claim of employees as to "charity work" was not found on the facts to be in violation of the Act.

The general conclusion reached by the master, based upon the evidence and applicable law, was that the plaintiffs had not established by a fair preponderance of evidence a violation of the Fair Labor Standards Act by the employer. Accordingly, he recommended that the complaint be dismissed. We have not deemed it essential to rewrite from the master's report, which embraces seventy-four printed pages of the record, his discussion of the evidence in the case; but, from careful examination, we find that the master's findings of fact were all supported by substantial evidence contained in the voluminous record and are not clearly erroneous.

Notwithstanding the findings of the special master, which were adopted by the district court except as hereinafter specified, the court applied an arbitrary formula, set up in its labeled "Findings of Fact," as follows:

"2. The Court finds that some of the plaintiffs started work before the regular starting time at the beginning of the work day and at the resumption of work after the lunch period. Plaintiffs are not entitled to pay from the minute they punched the time clock; but in computing their hours of work there should be allowed 5 minutes for punching the clock plus an additional 2 minutes to go from the clock to their place of employment, or a total of 7 minutes, before the beginning of work in the morning. There should be allowed a total of 5 minutes at the resumption of work after the lunch period.

"3. In computing the hours of work of plaintiffs as employees of defendant Mt. Clemens Pottery Company there should be included in addition to the hours of work as computed by the company the following:

"(a) In cases where an employee punched his time clock card more than 7 minutes before his regular starting time at the beginning of a shift, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded 7 minutes before the regular starting time.

"(b) In cases where an employee punched his time clock card more than 5 minutes before his regular starting time after his lunch period, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded 5 minutes before the regular starting time."

The district court concluded as a matter of law that the "plaintiffs have established that work was done by some of them which the Company did not give them credit for, and the computation thereof, on the basis above stated, forms a basis for recovery of overtime pay." Judgment was entered in favor of the employees on the basis of this formula, an equal amount was added thereto as liquidated damages; and the plaintiffs were allowed, as costs to be taxed against the appellant, $2,000 as fee compensation to their attorneys. The compensation of the special master was taxed to the appellant company.

The judgment of the district court must be reversed. There was abundant substantial evidence to support the findings of the special master and it could not appropriately be said that such findings are clearly erroneous. Civil Procedure Rule 53(e)2 distinctly provides that "in an action to be tried without a jury the court shall accept the Master's findings of fact unless clearly erroneous."

The district court is as much obliged to accept the findings of a master, unless clearly erroneous, as this court is to accept the findings of the district court unless clearly erroneous. See *Santa Cruz Oil Corporation* v. *Allbright-Nell Co.*, 115 F. (2d) 604, 607 (C. C. A. 7). Cf. *Morris Plan Industrial Bank* v. *Henderson*, 131 F. (2d) 975, 976 (C. C. A. 2).

Rule 52(e)2, as well as Rule 52(a) which binds this court to accept the findings of the district judge, unless clearly erroneous, is based on the same principle, long recognized in law, that the master or judge who person-

ally observes the witnesses is in better position to pass upon conflicting testimony and the credibility of witnesses than is a tribunal which has neither seen nor heard the witnesses.

Moreover, the arbitrary formula applied by the district judge, in lieu of acceptance of the master's findings, produced a judgment based upon surmise and conjecture, which cannot be sustained. See *Townsend* v. *New York Cent. R. Co.*, 141 F. (2d) 483 (C. C. A. 7).

The Fair Labor Standards Act is of course applicable to employees compensated on a piece rate basis. *United States* v. *Rosenwasser*, 323 U. S. 360. But the burden rested on each of the plaintiffs here to prove by a preponderance of the evidence that he did not receive the wages that he was entitled to receive under the Fair Labor Standards Act, and to show by evidence, not resting upon conjecture, the extent of overtime worked. It does not suffice for the employee to base his right to recovery on a mere estimated average of overtime worked. To uphold a judgment based on such uncertain and conjectural evidence would be to rest it upon speculation. *Jax Beer Co.* v. *Redfern*, 124 F. (2d) 172, 175 (C. C. A. 5). See also *Tennessee Coal, Iron & Railroad Co. et al.* v. *Muscoda Local No. 123 et al.*, 135 F. (2d) 320 (C. C. A. 5); *Epps* v. *Weathers*, 49 F. Supp. 2 (D. C. Ga.).

In *Tennessee Coal, Iron & Railroad Co. et al.* v. *Muscoda Local No. 123, et al.*, 321 U. S. 590, 593, the judgment of the Fifth Circuit Court of Appeals, in the same case cited supra, was affirmed, to the effect that iron ore miners were at work, within the meaning of the Fair Labor Standards Act, while engaged in underground travel which they were obliged to perform on the property of and under the direction of their employers as a necessary concomitant of their employment. It should be observed, however, that the Circuit Court of Appeals, whose judgment was affirmed, had also held that with respect to time spent by the employees in checking in and out and procuring and returning tools, lamps and carbide, no overtime was allowable. The Court of Appeals, in its opinion, said: "In addition to the practical difficulties

incident to the computation of isolated moments so elusive in character, we think these pursuits should not be computed as work-time, since they fall within the category of duties incident to qualifying the employee to perform his work rather than within the scope of his actual employment." 135 F. (2d) 320, 323, *supra*.

It seems appropriate to quote the language of Mr. Justice Jackson, writing the unanimous opinion of the Supreme Court in *Skidmore* v. *Swift & Co.*, 323 U. S. 134: "We have not attempted to, and we cannot, lay down a legal formula to resolve cases so varied in their facts as are the many situations in which employment involves waiting time. Whether in a concrete case such time falls within or without the Act is a question of fact to be resolved by appropriate findings of the trial court."

The crucial question of fact in the instant case had been resolved against the appellees, upon substantial evidence, by a special master to whom the district judge had referred the cause. The fact findings of the master were certainly not clearly erroneous. Wherefore, the district judge should have upheld the master's findings and should have based his judgment thereon. This he failed to do; but, instead, supplied an arbitrary formula not derivable from substantial evidence of record.

Accordingly, the judgment of the district court is reversed and the cause of action is ordered dismissed.

CLERK'S CERTIFICATE

UNITED STATES CIRCUIT COURT OF APPEALS

For the Sixth Circuit

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of Record and Proceedings in the case of *Mt. Clemens Pottery Company* v. *Steve Anderson, et al.*, No. 9924, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 5th day of July, A. D. 1945.

J. W. Menzies,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

(seal)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 15, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

United States of America

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 34

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL NO. 1083, UNITED POTTERY WORKERS of AMERICA, affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

Petitioners,

vs.

MT. CLEMENS POTTERY COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Sixth Circuit

LEE PRESSMAN,
718 Jackson Place, N. W.,
Washington, D. C.,
Attorney for Petitioners.

EDWARD LAMB,
1014 Edison Building,
Toledo, Ohio,
Of Counsel.

FRANK E. COOPER,
BEAUMONT, SMITH & HARRIS,
Ford Building,
Detroit 26, Michigan,
BERT V. NUNNELEY,
Mt. Clemens, Michigan,
Attorneys for Respondent.

Interstate Brief & Record Co., Cass Bldg., [illegible] Fort St. W., Detroit 26, Mich.

United States of America

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 342

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL NO. 1083, UNITED POTTERY WORKERS of AMERICA, affiliated with the Congress of Industrial Organizations, Mt. Clemens Michigan,

Petitioners,

vs.

MT. CLEMENS POTTERY COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Sixth Circuit

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To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review the decree of the Circuit Court of Appeals for the Sixth Circuit, entered on May 21, 1945, reversing, with directions, the decree of the District Court of the United States for the Eastern District of Michigan, entered June 13, 1944.

OPINION BELOW

The opinion of the court below filed May 21, 1945, is printed in the Transcript of Record herein and appears on pages 1587 to 1597.

BASIS OF JURISDICTION

Jurisdiction is invoked under the provisions of the Fair Labor Standards Act of 1938, 52 Stat. 1060, 1063, 29 U. S. C., Sec. 207 (a). Application for stay of mandate pending application in this court for writ of certiorari was made on or about June 18, 1945. Order staying said mandate for thirty days or until final disposition by the United States Supreme Court was entered on August 13, 1945.

QUESTIONS PRESENTED

The fundamental question presented in this petition is whether a circuit court of appeals having before it findings of fact, conclusions of law and judgment of the district court to the effect that employees should be paid for work performed according to their time clock records, less seven minutes travel time in the morning, and five minutes travel time at the resumption of work after the lunch period, may on the record herein, reverse said judgment and deny said employees compensation for said work time.

Petitioners herein filed their action under the Fair Labor Standards Act of 1938, Sec. 7 (a), which provides that employees shall receive compensation at the rate of

one and one-half times the regular rate at which they are employed for hours worked in excess of the statutory number set forth therein. Petitioners state that the District Court found specifically herein (Transcript of Record, page 288) that the "defendant company, through its foreman, had sought to circumvent the Fair Labor Standards Act." The petitioning employees were required to report and proceed to work as much as 30 minutes a day for which they were not compensated. The District Court stated (Transcript of Record, page 288) as follows:

> "1. Plaintiff employees contended in effect that they were required to report for work approximately fourteen minutes before the hour in the morning and that they immediately started productive work and were paid only from the subsequent quarter hour. The employees further contended that this process of requiring them to work fourteen minutes after the hour was repeated at lunch recess, without payment except from the hour. After reviewing the record of the evidence adduced, the Court is convinced that plaintiff employees were in fact required by the foremen of the defendant as we stated in our earlier opinion that"
>
> "when they (foremen) told them (employees) that work would start at 6:45 o'clock, they likewise mentioned the hour of 6:31; or if 7:00 A. M. was the starting time, then 6:46 was also designated in some manner. With this picture before us we cannot help but believe that there was a method in this formula beyond that expressed by defendant's witnesses."

The District Court personally examined exhibits and witnesses and then reviewed and re-reviewed the testimony, (Transcript of Record, page 287), but the Circuit Court of Appeals reversed the Findings of Fact, Conclusions of Law, as found by the District Court and upheld

the Special Master's findings and dismissed the petition. Petitioners state that the findings of the Circuit Court of Appeals herein, in refusing the employees compensation for the working time spent upon the employer's premises, is directly in conflict with the ruling of the United States Supreme Court in the case of *Tennessee Coal and Iron Company v. Muscoda*, 321 U. S. 590, and in the case of *Jewell Ridge Coal Company v. Local No. 6167, United Mine Workers of America, No. 721*, decided by the United States Supreme Court May 7, 1945.

SUMMARY STATEMENT

The essential facts are contained in the Bill of Complaint and the Answer. The action herein was brought under the provisions of the Fair Labor Standards Act, and was instituted by seven employees and by Local No. 1083, United Pottery Workers of America, affiliated with the Congress of Industrial Organization of Mt. Clemens, Michigan. More than 300 employees filed written, specific designations authorizing the prosecution of this action on their behalf. Most of the employees were piece-workers engaged in the manufacture of pottery products for shipment in interstate commerce. Innumerable motions were filed by the defendant company, and finally a Special Master was designated to take the testimony for the benefit of the District Court. Approximately 3500 printed pages of testimony were offered and the Special Master made his report to the Honorable Frank A. Picard, District Judge, on March 23, 1943 (Transcript of Record, page 143). The District Court, after many hearings, wrote its first opinion on July 2, 1943 (Transcript of Record, page 239) and submitted and adopted Findings of Fact on September 13, 1943 (Transcript of Record, page 272). The

court wrote an additional opinion which was filed on March 3, 1944 (Transcript of Record, page 287). A judgment for the plaintiff employees was filed on June 13, 1944 (Transcript of Record, page 297). The District Court in said judgment granted the employees who were before said court a judgment for

> "all unpaid time over seven minutes before the starting hour in the morning, and over five minutes before the hour set for beginning of the afternoon work. No deduction therefrom shall be made by the defendant for bonuses or so-called extra compensation which the Court herein discussed in its opinion of March 3, 1944, and found to be gratuities, gifts and extra compensation voluntarily paid by defendant to the plaintiff employees. Upon such determination of the time worked by said employees, the defendant shall pay said employees for all hours in which they were so employed at the rate of time and one-half times their regular rate for the time spent in excess of the prescribed hours established by the Fair Labor Standards Act of 1938, and the defendant shall pay to said plaintiffs and other employees having duly filed their authorizations herein, an amount equal thereto as liquidated damages, as provided for in said Act" (Transcript of Record, page 298).

The employees substantiated their working hours by the time clock cards which were the only records maintained by the company, recording the working time. The company herein had the unusual and unfair method of computing working time of employees from the subsequent quarter hour after the employees checked in for work, and from the prior quarter hour when they checked out. The testimony revealed that preparation for productive work, such as changing clothes, collecting tools and taking care of their personal needs was all undertaken by the employees prior to checking through the time clock. The evidence also revealed that it took between one minute and

two minutes from the time when the employees checked through the time clock cards to the time when they undertook productive labors. The employer assigned work benches to the employees in various parts of the plant.

The petitioners contend that there is little factual or legal difference between this case and the *Tennessee Coal and Iron Company* and the *Jewell Ridge Coal Company* cases, *supra*, heretofore decided by the United States Supreme Court. The contention of the petitioning employees is that they should be paid by the time clock cards as maintained by the employer. The travel time between the time clocks and their work benches as well as all other activities after punching the time clocks bears all the indicia of work as described in said decisions of the United States Supreme Court, and more particularly labeled as follows. There was present:

1. Physical and mental exertion expended by the employees on the employer's premises.
2. Said exertion was controlled or required by the employer.
3. Such exertion was pursued necessarily and primarily for the benefit of the employer and his business.

As the District Court below found, the defendant company required its employees to report for work at 14 minutes to 7:00 o'clock in the morning, starting them practically immediately, and yet computed their hours from 7:00 o'clock continuing this practice throughout the day as above enumerated, so that, in fact, the employees worked approximately 56 minutes every day which was not computed in figuring overtime. (Transcript of Record, page 240.)

The District Court below found, furthermore, as a fact, that a vast majority of the employees had checked through the time clocks more than 10 minutes prior to 7:00 o'clock, and "by 8 minutes to 7:00 but a few stragglers were left." (Transcript of Record, page 242.) The Special Master did not discuss this latter fact in his report, and the District Court's Opinion and Finding of Fact is the only finding of fact on that point. Petitioners state that the Circuit Court of Appeals for the Sixth Circuit took no evidence thereon and did not find that said finding of fact was erroneous, but nevertheless reversed said District Court.

Although the United States Supreme Court has found that employees performing such productive labors are to be paid for the entire work week, the Circuit Court below in the instant case apparently decided the exact opposite, the court holding that an employer could require his employees to report on the premises and undertake productive labors at any time, disregarding time clock records and then pay said employees only for an arbitrary, "starting time" which began a considerable time after actual productive labors were undertaken.

While it is the contention of the petitioners that this case is not unlike the *Tennessee Coal and Iron Company* and the *Jewell Ridge Coal Company* cases, *supra*, we respectfully point out that the trial court herein, in its decision of March 5, 1944, (Page 287, Transcript of Record) did not base its judgment for the plaintiffs upon a ruling that the time spent by the employees in checking through the time clocks or in going to their work places was strictly working time. Instead the District Court indicated *that time spent in these activities should be credited to the employer and deducted from the time shown on the time cards.* The Circuit Court of Appeals for the Sixth Circuit, however, in treating this case as an ordinary travel

time case, misconstrued the District Court's decision and adoption of a formula crediting the employer with certain work time as shown by the employees' time cards.

We have, therefore, a case in which the question presented is one which has been expressly reserved by the United States Supreme Court in the *Tennessee Coal and Iron Company* and the *Jewell Ridge Coal Company* cases, *supra*. In the former it was stated, "This does not foreclose, of course, reasonable provisions of contract or custom governing the computation of work hours where precisely accurate computation is difficult or impossible" and in the latter case, "Nor do we make any intimation at this time concerning the validity of agreements whereby, in a *bona fide* attempt to avoid complex difficulties of computation, travel time is averaged or fixed at an arbitrary figure and underground miners are paid on that basis rather than according to their individual travel time." The District Court, after extensively examining the evidence and exhibits did, in fact, adopt a formula described by the Circuit Court as "arbitrary" (Page 1594, Transcript) of crediting the employer with certain minutes of the employees' work time. The Circuit Court in this case actually characterized an award for hours worked minus travel time roughly computed as a "judgment based upon surmise and conjecture which cannot be sustained" (Transcript of Record, page 1596).

Petitioning employees throughout these proceedings have argued that because of the impossibility of calculating travel time to the exact second the reviewing court should compel a modification of the trial court's decision by cancellation of the deduction given the employer herein. Petitioning employees sought instead an order that the employees be given full recovery from the employer for the amounts shown on the time cards. The employer

is required by Section 11(c) of the Act and the Regulations thereunder to maintain records of the hours worked by the employees. The company records show hours worked for which the employees were not in fact paid. The District Court found that part of the time shown by the records for which the employees were not in fact paid was spent in productive work on the job (Trans. of Record, page 242). Under these circumstances it would seem elementary that the employer must carry the burden of showing wherein its records were erroneous because of the inclusion of time therein which ought not be considered working time. Because of the Circuit Court's mention of the *Tennessee Coal and Iron Company* case we respectfully call attention to the fact that the Circuit Court misconceived the District Court's decision herein and erroneously treated the trial court's formula as allowing pay for travel time, whereas it was in fact an effort to credit the employed with working time of the employees.

Thus, the decision of the Circuit Court for the Sixth Circuit, reversing the District Court below and interpreting an important statute of the United States, leaves the law as to working time in our industrial plants in a state of uncertainty, and the determination of this question by this Court will settle this extremely important point of law and remove the uncertainty and make for uniformity of decisions as to rights of employees under the Fair Labor Standards Act of 1938. That said decision of the Circuit Court of Appeals for the Sixth Circuit is in conflict with applicable decisions of this Court and it is submitted that said Circuit Court has so far departed from the usual course of judicial proceedings as to require review by this Court.

Wherefore, it is respectfully submitted that this Petition for Writ of Certiorari to review the judgment of the

Circuit Court of Appeals for the Sixth Circuit, should be granted.

LEE PRESSMAN,
718 Jackson Place, N. W.
Washington, D. C.,
Attorney for Petitioners.

Of Counsel:
EDWARD LAMB,
1014 Edison Building,
Toledo, Ohio.

NOTICE OF FILING PETITION FOR REVIEW

To: Frank E. Cooper,
Beaumont, Smith & Harris,
and
Bert V. Kuimeley,
Attorneys for Respondent.

You are hereby notified that on the 20th day of August, 1945, the petitioners, Steve Anderson, Earl Trombley, Lillian Socia, Albert Watkins, Arthur Sibbe, Nelson Luchtman, Rita Schulte, individually, for and in behalf of themselves and others similarly situated; and Local No. 1083, United Pottery Workers of America, Affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan, filed in the Supreme Court of the United States a petition for review on Writ of Certiorari of the decision of the Circuit Court of Appeals in the case in that court in which petitioners are appellees, and respondent is appellant, being cause No. 9924 on the docket of said court.

Copy of petition, of the printed record in said cause, and of the brief and statement in support of said petition are annexed hereto and are hereby served upon you.

LEE PRESSMAN,
Attorney for Petitioners.

Of Counsel:
EDWARD LAMB.

United States of America

In the

Supreme Court of the United States

OCTOBER TERM, 1945

No. 342

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL NO. 1083, UNITED POTTERY WORKERS of AMERICA, affiliated with the Congress of Industrial Organizations, Mt. Clemens Michigan,

Appellants,

vs.

MT. CLEMENS POTTERY COMPANY,
Mt. Clemens, Michigan,

Appellee.

BRIEF OF APPELLANTS

(Plaintiff Employees Below)

LEE PRESSMAN,
718 Jackson Place, N. W.,
Washington, D. C.

EDWARD LAMB,
1014 Edison Building,
Toledo, Ohio,

Interstate Brief & Record Co., Cass Bldg., 457 Fort St. W., Detroit 26, Mich.

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vs.

MT. CLEMENS POTTERY COMPANY,
Mt. Clemens, Michigan,

Appellee

BRIEF OF APPELLANTS

(Plaintiff Employees Below)

STATEMENT OF QUESTIONS INVOLVED AND POSITION OF PARTIES WITH RESPECT THERETO

I.

Are the plaintiff employees of the Mt. Clemens Pottery Company, appellants herein, under the record herein, entitled to compensation for working time spent upon the premises of the employer, at the employer's request, while performing production work for employer?

The District Court below found as a fact that the employees were on the premises of the employer, at the employer's request, producing goods for shipment in interstate commerce, and that the employer herein had sought to circumvent the provisions of the Fair Labor Standards Act of 1938. But the District Court held that the employees herein were entitled to compensation only for the time which they worked in excess of 7 minutes before the starting hour shown upon the time cards, in reporting in, in the morning and that the defendant should compensate employees for all minutes shown on the time cards, amounting to more than 7 minutes before the "regular starting hour," in the morning and over 5 minutes before the "regular starting time," in the afternoon. Regular starting time, the Court will note from the record herein, is the subsequent quarter hour after actual work is begun.

The plaintiffs (appellants herein) contend that they were entitled, under the facts established in this case, to compensation for all times shown upon the time cards, including periods up to 56 minutes a day. In other words, the employees have been deprived of compensation for the working time which they spent in reporting in, for instance, at 6:46 A.M., since the Company paid them only from the subsequent quarter hour, or 7:00 A.M. As the District Court below found specifically herein:

> "when they (foremen) told them (employees) that work would start at 6:45 o'clock, they likewise mentioned the hour of 6:31, or if 7:00 A. M. was the starting time, then 6:46 was also designated in some manner." (Transcript of Record, Vol. 1, page 288.)

The defendant company (appellee herein) contends that the employees are *not* entitled to be paid for the time shown upon their own time cards, nor in accordance with the formula adopted by the District Court below. The time

cards are the only records of time worked which the employer maintained under the requirements of the Fair Labor Standards Act, providing for the maintenance of accurate work records. The plaintiffs-appellants contend that they should be paid in accordance with the time cards, but if an alternative rule is adopted by this Court, that the formula approved by the District Court below should be adopted.

II.

When travel time is difficult of precise computation, may the District Court, as here, adopt a reasonable formula by which employees may be reimbursed for certain travel time spent upon employer's premises, at employer's request?

The plaintiff-employees say that the District Court had such authority under the decisions of the United States Supreme Court. The defendant company contends that the District Court had no such authority.

III.

May the employer charge the employees for tools used by the employees in productive work undertaken at the request of, and for the benefit of, the employer?

The plaintiffs (appellants herein) contend that such charges should be paid by the employer and that deductions from the wages of the employees may not be made for such a purpose.

The appellee herein says that it may deduct from the employees' wages for the tools used by the employees in such productive work.

The District Court below permitted the deduction from the pay-checks of the employees.

IV.

After judgment against the appellee company for unpaid overtime compensation, may the company deduct as credits against amounts owing the employees, various bonuses or gratuities given some of said employees several years before?

The company (appellee herein) says that it may deduct such gifts or bonuses. The plaintiffs-employees contend that the company should not be permitted to do so. The District Court below stated that to deduct such gratuities or bonuses would:

> "savor too largely of Indian giving, and this Court would not be a party to such a strained interpretation." (Transcript of Record, Volume I, page 291.)

V.

May the employees designate other employees to act in their behalf in the prosecution of an action for unpaid overtime compensation and minimum wages under the Fair Labor Standards Act of 1938, and in this connection, may such employees bring the action in behalf of all employees similarly situated?

The company (appellee herein) objects to the prosecution of the action herein for the named employees and even for those who have filed their designations of agents as aforesaid.

The employees (appellants) maintain that the action herein can be maintained not only for themselves, and all

employees specifically designating them as their agents but, under the terms of the Act, "for all employees similarly situated."

The District Court below permitted this action to be prosecuted by the named employees and permitted the United Pottery Workers, a local union, to remain as a plaintiff, but the District Court provided that only those employees could be represented or be entitled to judgment when specific designations had been filed with the Court. Such written authorizations specifically designated these plaintiffs as agents for the prosecution of this action.

VI.

Are piece-workers entited to pay at the rate of time and one half their regular rate of pay for work performed during hours in excess of the statutory number of hours set forth in the Act?

The appellee company claims that the Act does not apply to piece-workers. The plaintiffs (appellants) contend that the Act applies to all workers, including piece-workers. The District Court below specifically held that these piece-workers are "within the ambit of the Fair Labor Standards Act."

VII.

May the Circuit Court of Appeals, Sixth Circuit, having before it the Findings of Fact, Conclusions of Law, and the judgment of the District Court to the effect that employees should be paid for travel time according to a reasonable formula, and on the record herein, reverse said judgment and deny said employees compensation for said work time, in the absence of a showing that said District Court acted in bad faith, in an arbitrary fashion or abused its discretion?

HISTORY OF LITIGATION

The Mt. Clemens Pottery, Mt. Clemens, Michigan, the appellee herein, is the largest manufacturer of dinner ware pottery in the United States, and employs between 1,000 and 1,200 workers. Several individual employees instituted this action in the District Court of the United States, for the Eastern District of Michigan, on April 16, 1941. The plaintiffs included employees of various departments, and also a local union, the United Pottery Workers of America, CIO. The action originally named the S. S. Kresge Company, which owns all of the stock of the Mt. Clemens Pottery Company, and has a board of directors which is more or less identical with the board of directors of Mt. Clemens Pottery Company. The S. S. Kresge Company filed various motions to be released from the action, and Judge Frank A. Picard, on June 13, 1941, signed an order denying the motion of the Kresge Company to be dismissed as a defendant. On June 15, 1943, the plaintiff-employees voluntarily dismissed the S. S. Kresge Company as a defendant herein, without prejudice to their action against the Mt. Clemens Pottery Company.

The workers involved in this action were engaged in the production and manufacture of pottery articles practically all of which are shipped in interstate commerce throughout the various states of the United States. The action filed herein under Section 16(b) of the Fair Labor Standards Act of 1938 was "brought in behalf of the individual plaintiffs and in behalf of all others similarly situated, employees of the Mt. Clemens Pottery Company." (Transcript of Record, Volume I, Page 7).

The production employees involved, worked upon a piece-work basis generally, and a few worked upon an hourly rate basis. This action of the employees sought

compensation at time and one-half their regular rate of pay for the hours worked in excess of the statutory number provided for in said Act. The action also sought the recovery of the minimum wage of 30¢ an hour for some of the employees, and also sought to recover for tools and other facilities which had been deducted from the employees pay checks. The action asked an accounting and judgment for each of the plaintiff-employees, and for each of the other employees similarly situated.

The District Court required the plaintiffs to file designations with the clerk of the court, signed by each employee designating the plaintiffs as their agents in the prosecution of their action. These designations were filed by approximately three hundred employees. On January 28, 1942, U. S. District Judge Picard referred the cause to a special master, and thereafter testimony was taken for several months, the report of the special master being filed on March 23, 1943. On July 2, 1943, Judge Frank A. Picard entered the Opinion of the Court. On September 13, 1943, Findings of Fact and Conclusions of Law were entered by said District Court. The Court required the defendant to make a computation of the monies owing certain plaintiffs in accordance with a formula described in said Opinion of the Court set forth on *Page 239, Vol. I of the Transcript* herein and reported in *60 Fed. Supp.* 146. This computation was made, and judgment was entered thereon. The company appealed from this judgment, to the United States Circuit Court of Appeals for the Sixth Circuit, which Court set aside the judgment of the District Court in an Opinion reported in *149 Fed. (2nd) 461.* The Opinion of the Circuit Court of Appeals for the Sixth Circuit was filed on May 21, 1945, and is printed in the Transcript of Record herein and appears in Volume III, Pages 1587 to 1597 inclusive.

FACTS

The plaintiff employees in the production departments of the Mt. Clemens Pottery Company had a well established course to follow in checking in and undertaking their labors for the company. After entering the plant they went to a rest room, a cloakroom, or what they called a "bullpen" where they took off their street clothes, hung them up in a locker, changed to work clothes, prepared for the labors of the day, and then as their time for work approached, they went to the time clock, punched in and then went directly from the time clock to their departmental assignments. (A description of this procedure is given by the various plaintiffs, including Steve Anderson, whose testimony appears in *Transcript of Record, Volume I, Page 410, et seq.)* The various employees went to the different posts and work benches assigned them by the employer, some of them at places close to the time clock, some of them to places a couple of hundred feet from the time clock. It took between a half minute and a minute and a half to get into productive activities after punching the time clock.

The productive work for these piece workers is not the subject of too much dispute. In the Dipping Department, for instance, it was necessary for employees like Steve Anderson *(Vol. I, Page 411, Trans.)* to do some preliminary work like taking water off the glaze and stirring it up to the right density, so that the employees could dip it and use it in the production of pottery. The employees didn't stand around waiting, after punching the time clocks at the Mt. Clemens Pottery Company—they did productive work necessary to carry on the employer's business.

The entire department could punch through the time clocks in a minute or a minute and a half *(Trans. Vol. I, Page 411)*, and since the employees were on a group piece

work job, each employee saw to it that his co-workers in the undertaking rushed into productive labors without delay. The procedure of the named plaintiffs was followed by other employees. *(Transcript of Record, Vol. I, Page 412.)*

The plaintiff employees testified specifically as to the time required to get into productive work after punching the time clock. Steve Anderson testified that he would be at work one-half minute after punching the time clock *(Transcript of Record, Vol. I, Pages 410-411)*. The plaintiffs Metz and Larimer testified that they would be in productive work one to two minutes after punching the time clock. *(Transcript of Record, Vol. II, Pages 610-611.)*

This case reveals a curious and an unusual situation in employer-employee relations in the United States. The Mt. Clemens Pottery Company, through its foremen and supervisors, would require the employees to report in at work and punch the time clock as much as fourteen minutes before the regular starting time. The employees in various departments were given a starting time, of say, seven o'clock in the morning, or six-forty-five in the morning. They would then be told the night before the "regular" starting time, but they were told to be there and start work at 6:31 *(Transcript of Record, Vol I, Page 414)*. But the company paid the employees only from the subsequent quarter hour.

The process was repeated at noon when the employees went out to lunch. If they left at 11:44 they would be paid upon the basis that they had not been engaged in productive work after 11:30! The same process was repeated going in to work after lunch and when they left in the evening, so that in many instances this amounts to as much as 56 minutes a day, that is, as much as fourteen minutes time was "contributed" by employees four times a day.

The very first conclusion reached by the District Court below *(Transcript of Record, Vol. I, Page 240)* was that these employees were required to spend this extra time in the company's production without being compensated therefor! It is true that the employees objected, and that there were strikes over the matter. While the Court will realize that individually this might amount to less than a dollar a day per person, that when this process was repeated a thousand times a day, every day, that the "saving to the company" over the years was very large.

The District Court below went into the matter of the evidence covering work-time very extensively, and found, in its Opinion on July 2, 1943, *(Transcript of Record, Vol. I, Page 243)* that "the company was purposely depriving the working man of that which is the only thing he has to sell—his hours or minutes of labor."

The Court below, at the request of both parties exhaustively re-examined the evidence, and on March 3, 1944, filed Findings of Fact *(Transcript of Record, Vol. I, Page 288)*, and there the Court found as a fact the following:

> "After reviewing the record of the evidence adduced, the Court is convinced that plaintiff employees were in fact required by the foreman of the defendant as we stated in our earlier opinion that
>
> > 'When they (foremen) told them (employees) that work would start at 6:45; or if 7:00 A. M. was the starting time, then 6:46 was also designated in some manner. With this picture before us we cannot help but believe that there was a method in this formula beyond that expressed by the defendant's witnesses.'
>
> "This Court found specifically that defendant company through its foremen had sought to circum-

vent the Fair Labor Standards Act, but we also held that from the evidence, the company should be allowed seven minutes before the starting hour as time spent by employees in checking through time clocks and in going to their places of employment during the day. This Court thus attempted to visualize the realities of the situation and required defendant to compensate employees for all minutes shown on the time cards over seven before the starting hour in the morning and over five minutes before the hour set for beginning of the afternoon work."

The employees substantiated their working hours by the time clock cards. These were the only records maintained by the company, recording the working time. The company herein had the unusual and unfair method of computing working time of employees from the subsequent quarter hour after the employees checked in for work, and from the prior quarter hour when they checked out. The testimony revealed that all preparations for productive work, such as changing clothes, collecting tools and taking care of their personl needs was all undertaken by the employees prior to checking through the time clock.

I.

Activities and Findings of The Wage & Hour Division of The United States Department of Labor

The Court herein will notice running through the approximately thirty volumes of the record, that not only innumerable witnesses and records were paraded before the Special Master and District Court below, corroborating the testimony of the plaintiffs to the effect that they were being deprived of their wages for working time, but even more, the United States Government agency

charged with the enforcement of various features of the Fair Labor Standards Act, found that the Mt. Clemens Pottery Company was wilfully avoiding its lawful duties to these appellants-employees.

Mr. Harry A. Reifin, supervising inspector of the U. S. Department of Labor, Wage and Hour Division in Michigan was called as a witness by the employees *(Trans. of Record, Vol. III, Pages 1314 et seq.)*. His testimony is very important. He testified that he had personally observed working conditions at the Mt. Clemens Pottery Company and interviewed employees and the various officers of the company on several occasions. He advised the company that it was violating the Act and that it was subjecting itself to liability to the employees for unpaid overtime compensation. On September 8, 1941 (Plaintiff's Exhibit 91 Trans., Vol. III, Page 1547) he advised the company that it was incorrectly computing the actual time worked by the employees engaged in the production of goods for interstate commerce, and referred specifically to the cases where employees punched their time cards in at 6:31 and were not credited with working time until 6:45. On one occasion during a conversation in the office of the company's president, Charles Doll, on November 21, 1939, Supervising Inspector Reifin testified *(Trans. of Record; Vol. III, page 1324)* that

> "I informed him that time spent on the premises by any employees *who were required to be there by the company was to be considered as time worked regardless of whether they worked or not,*"

Mr. Reifin testified *(Trans. of Record, Vol. III, page 1325)*, after observing the actual plant operations, and seeing that the employees prepared themselves for work by changing clothes, taking care of personal needs, etc., *before* they punched the time cards,

> "There are benches provided for employees on which to sit until the time for them to punch in."

The personal observations of this governmental agent showed him the length of time which it took employees to go from the time clock to their work (Trans. of Record, Vol. III, page 1328-1330) and this largely substantiated the testimony of Steve Anderson (Trans of Record, Vol. I, page 400) as to the length of time which it took any employee to punch his time clock and then begin productive work. Mr. Reifin, therefore, made it abundantly clear to the company that in pursuing a policy which deprived its employees of as much as fifty six minutes a day could only result in a company liability to the employees under Section 16(b) of the Act. Instead of condoning this reprehensible practice, as the company contends, the Wage and Hour Division advised them that the company was courting litigation. As Mr. Reifin testified (Tran. of Record, Vol. III, page 1331):

> "I advised Mr. Doll, of his probable liability under section 16 (b) of the Act and also advised and cautioned him against a continuation of any practice where employees were permitted to work any amount of time for which they were not paid and which was not regarded as hours worked."

The overwhelming evidence as disclosed in the Record herein clearly indicates that the Wage and Hour Division specifically disapproved the practice which the company was following, that the employees were not being credited with time worked and that the company thought that it would "take a chance" with the practice of crediting the employees with the smaller amount of working time. As the District Court below indicated, while these minutes a day "may seem small," yet when it is multiplied many hundreds of times every day, the company secured "profits" from its workers in a very large amount (Trans. of Record, Vol. I, Page 243).

II.

The Company Ordered the Employees to Report for Work at a Particular Time

The District Court below found as a fact that the Company-appellee had sought to circumvent the Fair Labor Standards Act in ordering its employees to do work before the regular starting time for which the employees received no wages. As we have pointed out, Steven Anderson and other appellants testified that the employees were told the night before, usually in a departmental meeting, as to the time they were to be at work the following day. Indeed, those who did not report on the job before the so-called regular starting time were sent home or given time off (*Trans. of Record, Vol. I, Page 413*). Miss Lillian Socia also testified (*Trans. of Record, Vol. II, Page 740*) that one girl, Goldie Bernacki, who reported at only eight minutes to seven was sent home for being "late." Additional significant evidence, of course, before the Court below was that of the time cards which show many employees checking for work at exactly at 6:46 or 6:31 for months on end (*Trans. of Record, Vol. III, Pages 1197-1198*).

But the testimony went much further, even the foremen who issued the work orders for the appellee admitted the facts to be as outlined by the appellant-employees. For instance, Foreman Ernest A. Harms testified (*Trans. of Record, Vol. III, Page 1191*) as follows:

> "Q. (By Mr. Lamb): I notice that each of those days, irrespective of starting time, she starts one minute after the quarter hour or two minutes after the quarter hour, and in each of the times irrespective of the working time, she has had her time computed from the following quarter hours; is that correct (handing cards to witness)?

A. Where there is 6:16, her time was computed from 6:30.

Q. That is right, and where it is 6:31, it would be computed from 6:45, is that correct?

A. That is right.

Q. And then the total time computed for her under the company's method of computation that we understand to be to the succeeding quarter hour and so forth, her total computation by the company amounts, in that two week period to exactly 84 hours, is that correct?

A. I think that is correct. I haven't added it up, but I think that it is correct."

At (Trans. of Record, Vol. III, page 1205) of the Record, appears the following, asked of Mr. Harms, the foreman:

"Q. Do you advise the employees the day before what time they should check in?

A. I do advise them, yes."

Then another foreman, Carl Starner, was asked about the company's activities in instructing employees to be on the job at a particular time. On (Trans. of Record, Vol. III, page 1064-1065) the Record appears the following:

"Q. Did you determine the evening before from some source as to what the starting time would be for the next day?

A. We always knew ahead of time when the starting time would be.

Q. Did you get that information, Mr. Starner, or did you make that decision? Did you get the information from someone else or did you make the decision as to what time the employees should come in the next day?

A. Well, it wasn't always just my decision.

Q. But did you participate in it?
A. Yes, sir.
Q. And then you conveyed that information to the employees, is that correct, the day before so that they would know?
A. That is correct."

III.

Computation of Wages

While it seems difficult to realize that this procedure of depriving workers of pay for actual working time could exist in modern America, we wish to emphasize that the tricky bookkeeping, which always worked to the company's advantage, did not seem to stop with merely depriving the workers of pay for actual working time. The employees were required to sign receipts for their wages even before they knew what they were getting. The company, instead of fixing a rate of pay, merely divided the earnings of the employees by the number of hours worked over a period of two weeks. The Wage and Hour Division of the U. S. Department of Labor finally required the company to compute time up to the date of its directive upon a "work week" basis, as required by the Act, and the company made a restitution of the monies it had made by that method of bookkeeping to certain employees. Employees received not cash or checks, but an "order" to go downtown to a Mt. Clemens bank to draw upon their wages. These might be labeled mere petty inconveniences to the workers, if the taking away of the workers' one asset of his time might be deemed an "inconvenience."

But in this situation the company went ever so much further. It even charged the worker with the tools he used in the production of goods for the employer. These tools or facilities included sponges, scissors, finger cots,

pails and other articles. The company admitted, moreover, making up to thirty-three and one-third per cent profit in marking up the articles which it bought and charged to the employees!

The District Court expressed its "sympathy" with the position of the employees on this unauthorized deduction from the pay checks of the employees, "since it seems only fair that the employer furnish the working appliances used by employees in the operation of the business. Doubtless, the trend in industry is in this direction, and when such practice becomes universal no employer will suffer a competitive disadvantage by following it." In spite of the declaration of the Court below that the custom of an industry could not violate the terms of the Act of Congress, the Court, nevertheless, refused to terminate the deductions for tools (*Trans. of Record, Vol. I, Page 246*) The worker-appellants insist that the decision of the Court violates the prevailing court decisions including the case of *Walling v. Peavy-Wilson Lumber Co. (D.C. La. 1943,* 49 U. S. Supp. 846). The Court therein stated as follows:

"Charge for Tools

"The defendant charged its loggers with saws, axes, axe handles, wedges, and coal oil. The pertinent Regulation of the Administrator is as follows:

Sec. 531. 1(d). The cost of furnishing 'facilities' which are primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.

"Legality of Regulation

"The Administrator finds tools of the trade and other materials and services incidental to carrying on the employer's business to be facilities. We determine and declare the Regulation to be legal.

"Trade Custom with Respect to Tools—

Conclusion

"The defendant contends that the sawyers of both cypress and pine logs were paid on a contract basis under the terms of which they furnish their services and their respective tools. We find this to be true. It has long been the custom of the trade that log cutters are to furnish their tools. This custom may not prevail or supersede the requirements of a regulatory law. We believe the laborers should be furnished their tools free of charge, as the tools should be considered fundamentally a part of the defendant's plant."

The Court also stated that,

"Administrator's Interpretative Bulletin

"The Administrator, in his Interpretative Bulletin No. 3, paragraph 17, has stated that no objection would be made to a voluntary assignment or order of an employee to pay a sum for the benefit of the employee to a creditor, donee or third party,

'provided that neither the employer nor any person acting in his behalf or interest directly or indirectly, derives any profit or benefit from the transaction.'

"Whether or not in a particular case the employee is any the worse off by reason of the fact that the employer benefits from the assignment, the opportunities for exploiting the transaction nevertheless exist. For practical enforcement and effective administration of the Act on a nation-wide basis, the Administrator's interpretation prohibiting such assignments where the employer derives a benefit or profit is certainly reasonable, if not indeed essential."

Appellants also contend that the action of the company violated Section 3 (m) of the Fair Labor Standards Act and the regulations of the Administrator of the Wage and Hour Division, Section 3 (m) which states:

> "(m) 'Wage' paid to any employee includes reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees."

Section 531. 1(d) of the regulations promulgated by the Administrator states that tools and other materials used in the employer's business are not "facilities" which can be considered in computing wages under Section 3 (m) of the Act. We thus have before this Court, squarely for decision, whether these deductions from employees' wages for tools, sponges, scissors, etc., can be made by an employer when such tools are used in the employer's business.

The District Court on two separate occasions stated that there was a planned attempt upon the part of the employer to circumvent the Fair Labor Standards Act. The Court stated:

> "When they (foremen) told them (employees) that work would start at 6:45 o'clock, they likewise mentioned the hour of 6:31, or if 7:00 A. M. was the starting time, then 6:46 was also designated in some manner. With this picture before us we cannot help but believe that there was a method in this formula beyond that expressed by defendant's witnesses."

The Court continued:

> "The Court found specifically that defendant company through its foremen had sought to circumvent the Fair Labor Standards Act, but we also held that from the evidence, the company should be allowed seven minutes before the starting hour as time spent by employees in checking through time clocks and in going to their places of employment during the day." (Trans. of Record, Vol. I, page 288.)

We submit that if the company was defrauding the employees of credits for time worked, that the employees should be entitled to compensation for *all* time worked as shown by the time records kept by the company and not merely the time in excess of seven minutes in the morning and five minutes in the afternoon, while the employees were actually engaged in their employment tasks. We maintain that they are entitled to credit for *all* time shown on the time cards while going into production in the morning, and in winding up production or maintaining equipment and apparatus at the end of their morning and afternoon shifts.

IV.

Conclusive Evidence Exists That All Employees Worked More Than the Company Gave Them Credit For

We are fortunate in this case that we have such conclusive testimony, even from the officials of the company themselves. Foreman Starner admitted that the employees might have started some time before the regular starting time (*Trans. of Record, Vol. III, Page 1061*). The plaintiff employees all testified that they and the other employees observed by them, all began production work immediately, after checking through the time clocks (Witness Larimer, *Trans. of Record, Vol. III, Page 1155*; Witness Freddle, *Trans. of Record, Vol. II, Page 846*, etc.). Counsel for the appellee has emphasized that a judgment cannot be based on speculation and further that the plaintiff-employees below had the burden of proof of showing with reasonable certainty the amount of overtime worked. It is the position of the appellant-employees that beside the oral testimony given throughout the months of hearings that they have been able to produce overwhelming and conclusive proof of the *exact* time worked. Each

of them is able, even now, to point to the time clock cards and show his exact working time each day during the periods in controversy. It is unusual, in most situations, for employees to show with such exactitude the time worked. But in this case the evidence is and has been before the courts showing practically every minute worked. While it is true that employees were required to work on Monday morning and at some other times before they were permitted to punch their time clock cards as a general rule, there is in evidence a time card showing thereon the exact time when each employee checked in and the exact time when each employee checked out. True, the company contends that the employees, in setting up machinery, cutting decals, taking water off of materials, stirring the mixtures and doing such other activities, were not doing "productive work," but as we must recognize, and the Supreme Court has indicated, employees are to be given credit for "working time" even though each second of their time is not spent in physical operation of machinery or mental exertion in employer's behalf.. If the employer wishes to do so, he may "if he chooses, hire a man to do nothing, or to do nothing but wait for something to happen." (*Armour & Co. v. Wantock*, 32 U. S. 126, decided by U. S. Supreme Court December 4, 1944.). We do not have here, therefore, a mere case of determining waiting time. We are conclusively shown in the instant case the following:

(1) That the employer, the night before, ordered the employees to be on his premises ready for productive work at a specific time.

(2) The testimony of the parties that they punched the time clocks and immediately went into productive work.

(3) That the time clock cards showing the exact minutes and hours worked by all of said employees.

We believe that the Court herein will observe answer to appellee's complaint that the formula adopted by the Court below "does not take into account the admitted occasions when employees started work late." While we have pointed out that we are in disagreement with the formula insofar as it fails to permit employees to be paid for all time represented upon their time clock cards, we nevertheless wish to emphasize that the employer could not suffer loss when an "employee started work late." The employer was bound to win in the bookkeeping set-up which it inaugurated in this case. If the employee came at 6:31, he was given credit for work only from 6:45. If he came at 7:31, he was given credit only from 7:45. In other words, irrespective of the time he started to work, the employee was always paid from the subsequent quarter hour. Of course the District Court below observed that the vast number of employees arrived during a particular fifteen minute period, and that "by eight minutes to seven o'clock only a few stragglers were left." *(Trans. of Record, Vol. I, page 242.)* But irrespective of the particular fifteen minute period in which the employee checked in, he was, nevertheless, *always* paid only from the subsequent quarter hour!

THE RECORD HEREIN REVEALS THAT WORKING TIME OF THESE EMPLOYEES, UNDER THE FAIR LABOR STANDARDS ACT, BEGINS WITH CHECKING IN AND ENDS WITH CHECKING OUT.

The Court will notice from the testimony adduced at the trial herein, that this case is not the usual one of defining what constitutes "waiting time," inasmuch as these productive employees were piece workers who prepared themselves for their productive tasks *before* checking through the time clocks. The only records kept by the employer, who is required to keep records under the Act, are these very time clock cards. It is true that the employer assigned the employees to different work benches and some of these benches were slightly more distant from the time clock than were other benches. The decision where the employee labored was, of course, that of the employer. (The plant lay-out appears in Exhibit 30-A, Vol. III Trans. of Record, page 1524.)

Judge Cavanah held that the time spent in going from time clock to work benches in such cases must be deemed compensable, *Sunshine Mining Company v. Carver* (D. C. Ida. 1941), 41 Fed. Supp. 60, since, after all, the employer determines the location of the work bench, whether it be near or far from the time clock. In this case, which is much stronger, the employer stood alongside of the time clock to see that the employees checked through quickly and then hastened to their work benches. The District Court below indicated that it was obvious that piece workers find a mutual agreement with the employer in getting into production as quickly as possible since, in that fashion, their earnings may be increased.

Much of the law concerning the meaning of travel time as working time is, of course, already decided by the United States Supreme Court in the portal-to-portal case of *Tennessee Coal, Iron & Railroad Company v. Muscoda Local 123, etc.*, 321 U. S. 590 (1944). This case is significant, furthermore, in outlawing customs in an industry, or in a trade union contract, which are inconsistent with the express words of an Act of Congress. The special master in this case had made a finding of fact that the employees of the Mt. Clemens Pottery Company had not complained about the practice of not getting paid according to the time worked as shown by the time cards, and that the system of computing time "had been in effect without change for several years prior to this suit." The Fifth Circuit Court of Appeals in the *Tennessee Coal & Iron case*, 135 Fed. (2nd) 320, answered that argument when it declared, with subsequent approval by the Supreme Court:

> "It may be conceded, *arguendo*, that for twenty-five years prior to 1936, iron ore miners had not been compensated for travel time, and that even after 1938, the *parties to this suit* had entered contracts whereby it was agreed that no wages should be paid for travel time . . . Industrial custom does not warrant the continuation of abuses that the Act was created to rectify; and no contractual agreement that compensation should not be paid for travel time is valid if in conflict with the Act."

The Court further stated:

> "The jurisdiction of the Court below and of this Court having been rightfully invoked, we are compelled to decide the issue as to work-time without regard to what may be the result of an accounting between the parties."

And further:

> "Applying Section 7 of the Act to the facts of this case, we hold that the time spent by under-

ground mining employees of appellants, from the time they were required to report and did report for work at the portal of the mine until they returned to the portal of the mine at the end of the shift, less the regular lunch period when they were relieved of all duties, constituted working time comprising the work-week; that appellants have not compensated said employees for some of said working time; and that reference of the cause to a master for calculation of amounts due said employees was proper."

The United States Supreme Court subsequently declared in the *Tennessee Coal, Iron & Railroad Company case, supra*:

> "Travel time is spent for the benefit of petitioners and their iron ore mining operations."

The Court also stated that,

> "It matters not that such travel is, in a strict sense, a non-productive benefit. Nothing in the statute or in reason demands that every moment of an employee's time devoted to the service of his employer shall be directly productive. Section 3 (j) of the Act expressly provides that it is sufficient if an employee is engaged in a process or occupation necessary to production. Hence employees engaged in such necessary but not directly productive activities as watching and guarding a building, waiting for work, and standing by on call have been held to be engaged in work necessary to production and entitled to the benefits of the Act. Iron ore miners traveling underground are no less engaged in a 'process or occupation' necessary to actual production. They do more than 'stand and wait' (citations). Theirs is a fossorial activity bearing all the indicia of hard labor."

The United States Supreme Court has thus determined finally that waiting or travel time upon employer's prem-

ises is working time, under the Fair Labor Standards Act of 1938. It appears clear that employees who are "engaged to wait" must be paid no less than if they were working, their compensation reflecting both waiting time and time spent in performance of the task itself. The Supreme Court has made the clear distinction, of course, that those "waiting to be engaged" are not employed, but that those who after being employed, or after reporting for work, are "engaged to wait" for materials, awaiting instructions, or assignment of activities, are entitled to compensation under the Act. *Armour & Company v. Wantock*, decided December 8, 1944, 323 U. S. 126; and *Skidmore v. Swift & Company*, 65 Sup. Ct. 161.[1]

The Administrator of the Wage and Hour Division, whose opinions at least are given respectful and earnest consideration by the courts and litigants, has therefore come to hold uniformly that payment is to be made for travel time in practically all industries. The Division has therefore extended to the West Coast lumber industry the rule established by the Supreme Court in the *Tennessee Coal, Iron & Railroad Company* case, *supra*, to the effect that it will henceforth enforce the Fair Labor Standards Act to the extent that time spent in travel to, from, or between the sites of logging and lumbering operations is to be paid for as time worked. (Vol. 7, Wage & Hour Reporter, page 1131, dated December 4, 1944.) See footnote.

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[1]Additional cases establishing the same point are as follows:

Walling v. Frank, 62 F. Supp. 261 (W. D. Ky.).

Walling v. Blue Mt. Logging Co., No. 380, decided Oct. 13, 1942 (W. D. Wash.).

Ulle v. Diamond Alkali Co., 8 Wage Hour Rept. 1043 (N. D. Ohio).

Alberts v. Porter, 10 Labor Cases, par. 62,809 (N. D. Ill.).

Ballard v. Consolidated Steel Co., 61 F. Supp. 996 (S. D. Calif.).

Edmondson v. Yellow Truck & Coach Co., 8 Wage Hour Rept. 187 (E. D. Mich., 1945).

In the last analysis, the employer herein has arbitrarily said, despite the repeated warnings of the Wage and Hour Division, and over the objection of the employees,

> "We will pay the workers only from the succeeding quarter hour, irrespective of the time they actually started work."

If the employer can thus impose his own formula, why can't the employer say with equal consistency,

> "We will henceforth pay only for a half hour, or an hour, after the employee begins his productive work."

The answer to this type of employer's reasoning is, of course, in the Act of Congress and in the courts of the land!

The plaintiff employees herein contend that there is little factual or legal difference between this case and the *Tennessee Coal and Iron Company* and the *Jewell Ridge Coal Company* cases, *supra*, heretofore decided by the United State Supreme Court. The contention of these employees is that they should be paid by the time clock cards as maintained by the employer herein. The employees would spend a short time traveling between the time clocks and their work benches and it is contended that that activity, after punching the time clocks, bears all the indicia of work as described in said decisions of the United States Supreme Court and more particularly described below.

1. Physical and mental exertion expended by the employees on the employer's premises.

2. Said exertion was controlled or required by the employer.

3. Such exertion was pursued necessarily and primarily for the benefit of the employer and his business.

As the District Court below specifically found, the appellee company required its employees to report for work at 14 minutes to 7:00 o'clock in the morning, starting them practically immediately, and yet computed their hours from 7:00 o'clock continuing this practice throughout the day, at lunch time and at the close of work in the afternoon, so that, in fact, the employees worked as much as approximately 56 minutes every day, which time was never computed in determining overtime. *(Trans. of Record, Vol. I, page 240.)*

The District Court below found, as a fact, after extensive study of the time clock cards, that a vast majority of the employees had checked through the time clocks more than 10 minutes prior to 7 o'clock and

> "by 8 minutes to 7 o'clock, but a few stragglers were left." (Trans. of Record, Vol. I, page 242.)

The Special Master did not discuss this fact in his report and the District Court's Opinion and Finding of Fact is the *only* finding of fact on this point. Plaintiff employees state that the Circuit Court of Appeals for the Sixth Circuit took no evidence whatsoever on this matter and that said Circuit Court of Appeals did not determine that said Finding of Fact was in any respect erroneous, but did, nevertheless, reverse the District Court's finding.

THE DISTRICT COURT DID NOT FIND THAT THE TIME SPENT BY THE EMPLOYEES IN CHECKING THROUGH THE TIME CLOCKS OR IN GOING THEREFROM TO THEIR PLACES WAS "WORK TIME," BUT DID FIND THAT SAID ACTIVITIES SHOULD BE CREDITED TO THE EMPLOYER AND DEDUCTED FROM THE TIME SHOWN ON THE TIME CARDS

Although the plaintiff employees contend that the United State Supreme Court has now firmly established the rule that employees performing such productive labors on the employer's premises, and at the employer's request, should be paid for the entire time so spent, the United States Circuit Court of Appeals for the Sixth Circuit has decided herein exactly the opposite, the Circuit Court holding that an employer could require its employees to report on the premises and undertake productive labors at any time, disregarding time clock records entirely—and then pay said employees only for an arbitrary "starting time," which begins a considerable time after actual productive labors are undertaken.

While it is the contention of the plaintiff employees that this case is not unlike the *Tennessee Coal and Iron Company* and the *Jewell Ridge Coal Company* cases, *supra*, we respectfully point out that the trial court herein, in its decision of March 3, 1945 *(Trans. of Record, Vol. I, page 287)* did not base its judgment for the pliantiff employees upon the basis that the time spent by the employees in checking through the time clocks, or in going to their work places, was strictly, "work time." Instead, the District Court indicated that *time spent in these activities should be credited to the employer and deducted from the time shown on the time cards.* The District Court simply adopted a formula providing that the *employer* should be

given a credit of 7 minutes, in reporting in in the morning, and 5 minutes in reporting back after lunch in the afternoon. Indeed, the formula still permitted the employer to receive as much as 14 minutes of each employee's time in checking out at noon and checking out in the evening!

The Circuit Court of Appeals for the Sixth Circuit, however, treated this case as an ordinary travel time case and completely misconstrued the District Court's decision and the latter's adoption of a formula crediting the employer with certain work time as shown by the employee's time cards.

Thus, we have herein a case in which the question presented is one which was expressly reserved by the United States Supreme Court in the *Tennessee Coal and Iron Company* and the *Jewell Ridge Coal Company* cases, *supra*. In the former it was stated, "This does not foreclose, of course, reasonable provisions of contract or custom governing the computation of work hours where precisely accurate computation is difficult or impossible" and in the latter case, "Nor do we make any intimation at this time concerning the validity of agreements whereby, in a *bona fide* attempt to avoid complex difficulties of computation, travel time is averaged or fixed at an arbitrary figure and underground miners are paid on that basis rather than according to their individual travel time." The District Court, after extensively examining the evidence and exhibits did, in fact, adopt a formula, subsequently described by the Circuit Court as "arbitrary," *(Trans. of Record, Vol. I, page 1594)* of crediting the employer with certain minutes of the employee's work time. The Circuit Court in this case actually characterized an award for hours worked, minus travel time roughly computed, as a "judgment based upon surmise and conjecture which cannot be sustained." *(Trans. of Record, Vol. I, page 1596.)*

Petitioning employees throughout these proceedings have argued that because of the impossibility of calculating travel time to the exact second the reviewing court should compel a modification of the trial court's decision by cancellation of the deduction given the employer herein. The employees sought, instead, an order that the employees be given full recovery from the employer for the amounts shown on the time cards. The employer is required by Section 11 (c) of the Act and the Regulations thereunder to maintain records of the hours worked by the employees. The company records show hours worked for which the employees were not in fact paid. The District Court found that part of the time shown by the records for which the employees were not in fact paid was spent in productive work on the job *(Trans. of Record, Vol. I, page 242)*. Under these circumstances it would seem elementary that the employer must carry the burden of showing wherein its records were erroneous because of the inclusion of time therein which ought not be considered working time. Because of the Circuit Court's mention of the *Tennessee Coal and Iron Mining Company* case *we respectfully call attention to the fact that the Circuit Court misconceived the District Court's decision herein and erroneously treated the trial court's formula as allowing pay for travel time, whereas it was in fact an effort to credit the employer with working time of the employees.*

ARE PIECE WORKERS ENTITLED TO PAY AT THE RATE OF TIME AND ONE-HALF THEIR REGULAR RATE OF PAY FOR WORK PERFORMED DURING HOURS IN EXCESS OF THE STATUTORY HOURS SET FORTH IN THE ACT?

The appellee company herein has, throughout the years consumed in this litigation, argued that the Act did not apply to piece work performed during overtime labors. Appellee's counsel has argued the question at some length, and state that while the employees are entitled to time and one-half their "*guaranteed* rate of thirty cents an hour," they are not entitled to compensation upon the production of pieces turned out during their overtime periods. They admit that the compensation of most of the employees herein was based upon the number of pieces made and that "for practical purposes their earnings depended on their production or on their piece rates rather than on the guaranteed regular hour rate."

We submit that with the decision in the case of *United States v. Rosenwasser*, decided January 2, 1945 (Vol. 8, page 1, Wage and Hour Reporter), the United States Supreme Court has now conclusively laid down the controlling rules in such cases.

The Supreme Court stated that the Fair Labor Standards Act applies to employees compensated at piece rates, that

> "neither policy nor legislative history gives any real basis for excluding piece workers from the benefits of the statute. This legislation was designed to raise substandard wages and to give additional compensation for overtime work as to those employees within its ambit, thereby helping to protect this nation 'from the evils and dangers resulting from wages too low to buy the bare necessities of life and from long hours of work injurious to health.' "

The Supreme Court held that Section 6 (a) in speaking of minimum rates in terms of hourly standards and Section 7 (a) in referring to "regular rate" which had been defined by the United States Supreme Court in terms of "hourly rate" certainly do not preclude application of the Act to piece workers. This holding of the Supreme Court, therefore, is exactly opposite to the contentions of the appellee herein.

The Supreme Court stated that

> "The plain words of the staute give an even more unmistakable answer to the problem. Section 6 (a) of the Act provides that 'every employer' shall pay to 'each of his employees who is engaged in commerce or in the production of goods for commerce' not less than the specified minimum 'rates' which at present are 'not less than 30 cents an hour.' Section 7 (e) provides that 'no employer' shall employ 'any of his employees' for longer than specified hours in any week without paying overtime compensation 'at a rate not less than one and one-half times the regular rate at which he is employed.' "

Of course, no difficulty exists in the instant case in determining what is the regular rate of pay of these piece workers. The employer reduced the earning of each employee, at the end of either one week, or at the end of two weeks, to an hourly rate by dividing the total earning at piece rates by the number of hours worked (without, however, giving overtime). We submit that appellee's contention, therefore, is completely negated by the following holding of the Supreme Court in the *Rosenwasser case, supra.*

> "The fact that Section 6 (a) speaks of a minimum rate of pay 'an hour,' while Section 7 (a) refers to a 'regular rate' which we have defined to mean 'the hourly rate actually paid for the normal, non-overtime work-week.' *Walling v. Helmerick &*

Payne, Inc., 323 U. S. (7 WHR 1054) (slip-sheet opinion, p. 3), does not preclude application of the *Act to piece workers. Congress necessarily had to create practical and simple measuring rods* to test compliance with the requirements as to minimum wages and overtime compensation. It did so by setting the standards in terms of hours and hourly rates. But other measures of work and compensation are not thereby voided or placed outside the reach of the Act. Such other modes merely must be translated or reduced by computation to an hourly basis for the sole purpose of determining whether the statutory requirements have been fulfilled. *Overnight Motor Co. v. Missel*, 316 U. S. 572, 579 (2 WH Cases 47); *Walling v. Helmerick & Payne, Ins., supra.* These hourly standards are not so phrased as reasonably to mislead employers into believing that the Act is limited to employees working on an hourly wage scale. *Nor can a court rightly use these standards as a basis for cutting off the benefits of the Act from employees paid by other units of time or by the piece. If that were permissible, ready means for wholesale evasions of the Act's requirements would be provided.*" (Italics ours.)

CONCLUSION

The writ of certiorari in this case was granted on October 15, 1945. The decision of the Circuit Court of Appeals for the Sixth Circuit, reversing the District Court below, is now to be reviewed by the highest court in the land. This decision will determine the law in the United States as to working time in our industrial plants and this court will settle this extremely important point of law and remove the uncertainties which have resulted from the decision of the Circuit Court of Appeals in setting aside the reasoned formula of the District Court. It is the con-

tention of the plaintiff-employees that the decision of the Circuit Court of Appeals in setting aside this formula has violated the applicable decisions of the United States Supreme Court.

The plaintiff-employees began this action in 1941 by filing a complaint, stating a cause of action for themselves "and for all employees similarly situated." The plaintiff employees have diligently prosecuted this action through the ensuing years and shown conclusively that the employees worked specific hours in excess of the statutory number set forth in the Act without payment at the rate of time and one-half for overtime. We have shown that time cards correctly record the actual working time, and that the employees went into production work immediately after punching the time-clock cards. We have shown that the employer imposed a formula of its own to the effect that pay would be given the employees "only from the subsequent quarter hour," irrespective of the actual starting time. We submit that the employer thus adopted to its own profit, and to the loss of the employees, the wages owing for working time. Appellants contend therefore, that in failing to pay these employees for all working time, rather than only the time decided upon by the employer, i.e., "the subsequent quarter hour" after checking in, that the employer violated the specific requirements of the Fair Labor Standards Act of 1938.

Appellants have shown that as piece workers, engaged in the production of goods for interstate commerce, the Act applies to them, that in working more than the statutory number of hours set forth in the Act, without overtime compensation being paid them in accordance with the specific requirements of the Act, that they have stated a cause of action and that the employer, under the order of the court, should make an accounting for all unpaid

working time. We maintain furthermore, that the worker, under the circumstances in this case, should not be required to pay for the tools and facilities he uses in the employer's business, and that in no event should the employer be permitted to deduct from the employee's pay check an amount in excess of the actual cost of the tools purchased by the employer, and used by the employee in the employer's pottery business.

We have shown that these employees were engaged in the production of goods for interstate commerce and that they are "within the ambit of the Act," irrespective of whether they worked on an hourly or upon piece-work basis, and that by reason of the evidence shown by the record herein, these appellants are entitled to have an accounting and to be paid for all overtime compensation accruing to them for the work-time shown upon the time cards, for which amount the appellants respectfully ask this Court to enter judgment.

We contend that precise computation of the employees' working time could be arrived at if this Court will order an accounting of the employees' time as shown on each of the payroll records. A Special Master could easily make such a computation from the available records. However, the District Court granted the employer a very substantial amount of the employees' working time when it said that the time spent in checking through the time clocks and in going to the work benches, (stated by the District Court as 7 minutes in the morning and 5 minutes in the afternoon) should be credited to the employer and deducted from the time shown on the time cards. The computation under the latter formula was easily arrived at by the employer and such computations appear in the record herein *(Trans. of Record, Vol. I, page 297)*. We respectfully urge the Court herein to grant the relief asked

for in the complaint herein, reversing the decision of the Circuit Court of Appeals for the Sixth Circuit and entering a final judgment for the plaintiff employees.

Respectfully submitted,

EDWARD LAMB,
1014 Edison Building,
Toledo 4, Ohio,

LEE PRESSMAN,
718 Jackson Place, N. W.,
Washington, D. C.,
Attorneys for Plaintiff-Employees,
Steve Anderson, et al.

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No. 342

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IN THE

Supreme Court of the United States

October Term, 1945

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHUETE, individually, for and in behalf of themselves and others similarly situated; and LOCAL NO. 1083, UNITED POTTERY WORKERS OF AMERICA, affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan.

Petitioners,

vs.

MT. CLEMENS POTTERY COMPANY,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

BERT V. NUNNELEY,
Mt. Clemens, Michigan,
FRANK E. COOPER,
11th Floor, Ford Building,
Detroit 26, Michigan,
Attorneys for Respondent.
BEAUMONT, SMITH & HARRIS,
Of Counsel.

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MT. CLEMENS POTTERY COMPANY,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The original opinion of the District Court (R 239-248) is reported in 60 F. Supp. 146. The District Court's find-

ings of fact and conclusions of law (R 272-274) and a supplemental opinion by the District Court (R. 287-292) do not appear to have been officially reported. The opinion of the United States Circuit Court of Appeals for the Sixth Circuit is reported in 149 F. (2d) 461.

JURISDICTION

The judgment of the United States Circuit Court of Appeals was entered May 21, 1945. A copy of the petition for certiorari was served on respondent's counsel on August 20, 1945. We have not received a copy of any separate brief in support of the petition, and assume that none was filed. Petitioners aver that they invoke jurisdiction of this Court "under the provisions of the Fair Labor Standards Act of 1938, 52 Stat. 1060, 1063, 29 U.S.C. Sec. 207 (a)." (Petition, p. 2).

STATEMENT OF THE CASE

This action was filed in April, 1941, by Local 1083, United Pottery Workers of America, C.I.O. and seven members of said Union, a few days after an organizational strike had been instituted by the Union against the Mt. Clemens Pottery Company, which operates in Mt. Clemens, Michigan, the largest single unit pottery plant in the United States (R. 1108), employing approximately one thousand to twelve hundred persons in the manufacture of dinnerware — plates, cups, saucers, etc., (R 382).

Disregarding claims set forth in the complaint but later dropped, and disregarding other claims on which the decision of the District Court was adverse to the plaintiffs (petitioners herein) and which they did not appeal, the only substantial issue was whether or not the employees or any of them started work a few minutes before the regular starting time, on occasions where an employee entered the plant before the time for starting work, and where there was no absolute physical impediment to his starting work a few minutes before the regular starting time. It was claimed by plaintiffs that this sometimes occurred; and that as a result some employees during the course of a workweek may have worked a little longer than was indicated by the Company's records. It was conceded that the employees received at least straight-time pay for any such time worked; but the claim was that in some cases these extra minutes extended the employees' total hours into the overtime brackets; and that in such instances they should have been paid time and a half rather than straight-time pay for such extra minutes of work, if any.

The case was referred to a Special Master, before whom hearings were conducted, covering some twenty-three court days and resulting in a transcript of testimony in excess of 3000 pages.

The evidence taken before the Master disclosed that the Company's time clocks were opened fourteen minutes before the starting time of each shift, and that employees were permitted to enter the plant and ring the clocks at any time during the fourteen minute period. It was necessary to allow this time so as to permit the employees to reach their departments and be ready to go to work at starting time. The proofs further disclosed that this was in accordance with the customary practice in manu-

facturing plants. Expert witnesses called by both parties testified that it is customary in all plants for the time clocks to be opened fifteen to thirty minutes before starting time so as to permit the employees to reach their places of work and be ready to start work at starting time. (R. 1237-1244; R. 1349-1359; R. 1459-1460.)

The testimony of several witnesses called by the defendant (respondent herein) was that the employees were instructed not to start work before starting time, and that in fact they did not start work before starting time, but that on the contrary it was often somewhat after starting time when work started. (R. 811, 989, 993, 1011, 1018, 1399-1400, 1173, 1302.)

Most of the employees were engaged in group operations, and could not start work until all the members of the group were on hand (R 183).

Eight employees or former employees were called by the plaintiffs (petitioners herein). They did not generally testify as to when work started (R 175). They testified, rather, that they punched their time cards and went to their departments. Some of them said that after arriving at their departments they went to work, but others did not venture even this assertion (R 180). One said that it had never occurred to him before the suit was started that he worked longer than the hours with which he was credited by the employer (R 651). The plaintiffs in the main rested their case on the theory that they must be paid from the moment they punched the time clock on entering the plant—making this contention despite the testimony of their own expert witness, a research director of the C.I.O., that the punching of the time clock does not coincide with the starting of work and does not bear

any direct relationship to the time of starting work (R 1459-60).

The Master found as a fact, on the basis of all the testimony, and giving weight to the apparent credibility of opposed witnesses, that if employees arrived early enough so as to have waiting time they did so voluntarily and were free to spend such time on their own behalf (R 199). He further found that production did not commence until the established starting time (R 191). He further found that there was no proof from which there could be computed for any individual plaintiff with any degree of reliability, either (a) the amount of time taken by certain preliminary activities, such as putting on overalls and gloves, opening windows, turning on light switches, etc; or (b) the proportion of the time, if any, so spent in advance of the established starting time (R 201). He accordingly found that the plaintiffs' claims should be dismissed.

On exceptions taken by the plaintiffs (petitioners) to the Master's report, the District Court (R 244) affirmed the finding of fact by the Master (R 199) that the hours of work could not be computed from the moment an employee punched the time clock on entering the plant in the morning; and the plaintiffs (petitioners herein) did not appeal from this finding. The District Court further affirmed the finding of fact by the Master that, under the circumstances of this case, the time spent by employees in punching the time clock and walking to the department, and waiting for other employees to arrive, was not working time (R 199, 241-244). Plantiffs (petitioners herein) did not appeal from this finding.

Thus there is no question in this case as to what activities are to be included as a part of the employees' hours

of work. The factual findings of the Master on this point were confirmed by the District Court, and no appeal was taken. The question was, rather, at what time work started. The Master found that there was no proof of work having started before starting time. The District Court, without taking additional testimony, concluded that "while in the main agreeing" (R. 241) with the findings of the Master that the allegations of plaintiffs as to starting work ahead of starting time were not true, held that it could nevertheless be assumed—on the basis of the Court's personal experience rather than on any proof (R 243)—that plaintiffs who had entered the factory earlier than the Court believed was necessary to have permitted them to start work at starting time, might have started work before starting time. The District Court therefore concluded that some (not all) employees did start work early (R 272). As a basis of estimating the amount of time (thus conceding that there was no proof as to the amount—in fact, the District Court characterized the evidence of the employees as to when work started as testimony which was not worth a continental—R 1506), the District Court adopted a formula that there should be added to the hours of work of each employee the number of minutes by which the time that such employee punched the time clock preceded seven minutes to starting time at the beginning of the day or preceded five minutes to starting time at the beginning of work after lunch (R 244, 273). In other words, an employee who punched in at seven minutes before starting time in the morning would not be given credit for any extra work; but an employee who punched in at eight minutes before starting time in the morning would receive credit for one minute's extra work regardless of whether or not there was any testimony whatever that the employee started work before starting time; and an employee

who punched in at ten minutes before starting time in the morning would receive credit for three minutes extra work, etc. In the afternoon, an employee who punched in at seven minutes before starting time would receive credit for two minutes extra work; an employee who punched in at eight minutes before starting time would receive credit for three minutes extra work, etc. This formula did not purport to be based on any testimony of any witnesses but represented rather a rough guess and arbitrary adjustment.

Computations made in accordance with this formula disclosed that the total amount of extra compensation for overtime (figured as required by the District Court's opinion) was $1,207.87 for 289 individuals, or an average of not quite $4.18 for a long period of time, representing an average of approximately one cent a day. Pursuant to the statute, liquidated damages in equal amount were added, and a judgment was entered against the defendant (respondent herein) in the sum of $2,415.74 (R 305).

The defendant (respondent herein) appealed to the Circuit Court of Appeals for the Sixth Circuit. The plaintiffs (petitioners herein) did not take any cross appeal. The Appellate Court, finding that there was substantial evidence to support the factual findings of the Master, and that there was no showing of any clear error therein, concluded that it was error for the District Court to refuse to accept these findings, resting its decision on the plain requirement of Rule 53 (e) (2) of the Federal Rules of Civil Procedure, 28 U.S.C.A. following Sec. 723 (c), which provides in part that "in an action to be tried without a jury the Court shall accept the Master's findings of fact unless clearly erroneous." The Appellate Court further ruled that the arbitrary formula applied by the District

Court produced a judgment based upon surmise and conjecture, and was hence invalid.

Accordingly, and without specific discussion of other points relied upon by the defendant (respondent herein), the Circuit Court of Appeals entered its judgment that the cause of action be dismissed.

QUESTIONS INVOLVED

Thus, as the case comes to this Court, it presents very narrow issues.

1. The first is whether or not the Circuit Court of Appeals correctly determined that "there was abundant substantial evidence to support the findings of the special master and it could not appropriately be said that such findings are clearly erroneous." (149 F. (2d) 461, 465). Under the findings of fact by the Master, there can be no question but that plaintiffs' cause must be dismissed. As the District Court said, the Master found that the claims of plaintiffs (petitioners herein) as to starting work early were not true (R 241). Therefore, unless upon a review of all the evidence it should be concluded that the Master's findings are clearly erroneous and not supported by substantial evidence, there can be no further question presented.

2. If on a review of all the evidence it should be concluded that the Master's findings were clearly erroneous and therefore not binding upon the District Court, a second question would arise as to whether or not the formula

adopted by the District Court produced a judgment based upon surmise, speculation and conjecture, and hence invalid. The Circuit Court of Appeals so held.

3. If certiorari were granted, this Court would also be called upon to review other points raised by the Company in the Circuit Court of Appeals but not specifically discussed in that Court's opinion. These points are enumerated in the Statement of Points Relied Upon (R. 364), and were briefed and argued before the Circuit Court of Appeals.

ARGUMENT

1. Issues Suggested by Petitioners Are Not Presented by the Record.

The argument of the petitioners (p. 4) is that the Circuit Court of Appeals refused the employees compensation for working time spent on the employer's premises; but this argument assumes that there was proof of uncompensated working time. This assumption is not supported by the record. The decision below did not involve an issue as to what was work, or what activities should be included in computing working time. Rather, the issue was as to when work started. The Circuit Court of Appeals found that there was abundant substantial evidence to support the factual finding of the Master that work did not begin prior to starting time. Accordingly, it applied the plain mandate of Court Rule 53 (e) (2) and held that this finding of fact, which was not assailed as being clearly erroneous, was conclusive.

The suggestion of petitioners (p. 8) that employees should be paid from the moment they ring the time clock

on entering the plant in the morning until the moment they again punch the time clock on leaving the plant, involves a question that is not and cannot be raised on this record. The District Court specifically found against the petitioners on this point (R. 244), and since petitioners (plaintiffs in the original action) did not appeal from this ruling of the District Court, such ruling and judgment became *res judicata*. Not having appealed, the plaintiffs in the lower court could not attack the District Court's judgment in the Circuit Court of Appeals, with a view to enlarging their own rights thereunder.

Peoria & Pekin Union Railway Co. v. United States, et al., 263 U. S. 528 (1923);

Alexander, Collector v. Cosden Pipe Line Co., 290 U.S. 484 (1933);

Helvering, Commissioner v. Pfeiffer, 302 U.S. 247 (1937);

LeTulle v. Scofield, 308 U.S. 415 (1939); and other cases there cited.

This issue accordingly was not before the Circuit Court of Appeals. The issue not having been raised in the Circuit Court of Appeals, it cannot be raised here.

Pierce v. United States, 255 U.S. 398, 405.

Hiawassee River Power Co. v. Carolina-Tennessee Power Co., 252 U.S. 341 (1920);

Illinois Central Railroad Co. v. Mulberry Hill Coal Co., 238 U.S. 275 (1914).

We feel compelled to direct the Court's attention to the circumstance that throughout petitioners' application for certiorari there are found argumentative statements concerning various aspects of the case which are not sup-

ported by the record but are in fact contradicted by the record. Without attempting to review such instances fully, may we point out a few illustrative instances. It is alleged on page 3 of the petition that the "petitioning employees were required to report and proceed to work as much as 56 minutes a day for which they were not compensated." This is entirely without support in the record, or in any findings. Yet, the charge is repeated, on page 6 of the petition, where it is set forth that the District Court found that the defendant company (respondent) required its employees to report for work at fourteen minutes to seven o'clock in the morning, starting work practically immediately, and yet computed their hours from seven o'clock, continuing this practice throughout the day, so that the employees worked approximately fifty-six minutes every day, which was not computed in figuring overtime. Petitioners refer to page 240 of the record. Reference indicates that the Court was stating this as the claim of the plaintiffs; but the Court found that this claim was not proved. On the contrary, it was found that employees were not required to, and normally did not, punch in fourteen minutes before starting time. This is referred to in the report of the Master (R 177) and the opinion of the District Court (R 243). Likewise, it was pointed out in the Master's report (R 182), and was referred to in the opinion of the District Court (R. 244), that employees did not continue work after the regular quitting time, but frequently quit work early. The finding is precisely the contrary from petitioners' assertion.

Again, it is said on page 3 of the petition that the District Court personally examined witnesses. This was not the case.

On page 5, it is said that the time clock cards were the only records of working time maintained by the Com-

pany. This is incorrect. The record herein contains many exhibits comprising the Company's records of working time, other than time clock cards, which (in accordance with the usual practice, R. 1237, 1460) were used primarily as attendance records.

It is further averred (p. 5) that the Mt. Clemens Pottery Company "had the unusual and unfair method of computing working time of employees from the subsequent quarter hour after the employees checked in for work, and from the prior quarter hour when they checked out." The fact is, that plaintiffs' (petitioners') own witnesses did not dispute the testimony of defendant's witnesses that the general and customary practice in computing working time was the same as that followed by respondent (R 1459-60, R 711; cf. R 1237-1244; R 1340-1341; R 1349).

Again it is charged (p. 5), that the evidence revealed that it took between one minute and two minutes from the time when the employees checked through the time clock cards to the time when they undertook productive labors. There was no such finding, and we submit there was no such evidence. The suggestion on page 7, that the Circuit Court of Appeals decided that an employer could require his employees to report on the premises and undertake productive labors at any time and then pay said employees only for an arbitrary starting time, which began a considerable time after actual productive labors were undertaken, is obviously a complete perversion of the opinion of the Circuit Court of Appeals. We repeat that the record herein does not present the issues suggested by petitioners.

2. The Decision of the Circuit Court of Appeals Is Not in Conflict With Decisions of Other Circuit Courts Nor With Applicable Decisions of This Court.

The decision in the instant case is not in any way inconsistent with the holdings of this Court in *Tennessee Coal, Iron & Railroad Company v. Muscoda Local No. 123 et al.*, 321 U.S. 590 (1943), and *Jewell Ridge Coal Corporation v. Local No. 6167, United Mine Workers of America*, No. 721, decided May 7, 1945, 65 S. Ct. 1063. In both those cases, the issue was whether or not certain activities constituted working time within the meaning of the Fair Labor Standards Act. That issue was not presented here. In this case, the District Court concurred in the finding of the Master (and no appeal having been taken to the Circuit Court of Appeals, the issue is here foreclosed) that on the particular facts here disclosed the time spent by employees in punching the time clocks and walking to the department and waiting there until work started, was not working time (R 199, 241-244). The only issue was the factual inquiry as to whether, after reaching their departments, the employees started work before starting time.

Both the District Court and the Circuit Court of Appeals referred to the decision in the *Tennessee Coal* case, *supra*. When the District Court filed its opinion, the *Tennessee Coal* case had progressed through the Fifth Circuit Court of Appeals. The District Court (observing that under the decision of the Circuit Court of Appeals

compensation was not allowed the miners for time spent changing their clothes and getting ready for work—all of which took at least ten minutes) said: "As a matter of fact, if this Court is to rely upon that decision plaintiffs are entitled to nothing here." (R 244). When the instant case reached the Sixth Circuit Court of Appeals, the Supreme Court had affirmed the Fifth Circuit Court's decision in the *Tennessee Coal* case, and the Sixth Circuit Court of Appeals in the instant case pointed out that its decision was in agreement with the determination in the *Tennessee Coal* case (149 F. (2d) 461, 465). In other words, the District Court said that if it had followed the decision in the *Tennessee Coal* case it would have dismissed plaintiffs' claims, and the Circuit Court of Appeals, following that decision, did dismiss plaintiffs' claims.

The *Jewell Ridge* case, so far as it has a bearing on the issues here involved, adds nothing to what was decided in the *Tennessee Coal* case. In both those cases, the decision of the Supreme Court was directed solely to the question as to whether or not time spent by miners in traveling through the shafts of the mine comprised "working time." This is quite different from time spent by workers in an industrial plant walking from the time clock to their departments. The distinction was pointed out in the Master's report (R 198).

The judgment of the Sixth Circuit Court of Appeals in the instant case is fully supported by the decisions of the Supreme Court in *Skidmore, et. al. v. Swift & Company*, 323 U.S. 134 (1944), and *Armour & Company v. Wantock, et. al.*, 323 U. S. 126 (1944), holding that what is working time is essentially a question of fact in each case. In this case, the Circuit Court of Appeals, quoting the decision

of the Supreme Court in the *Skidmore* case, observed that "'Whether in a concrete case such time falls within or without the Act is a question of fact to be resolved by appropriate findings of the trial court.' The crucial question of fact in the instant case had been resolved against the appellees, upon substantial evidence, by a special master to whom the district judge had referred the cause. The fact findings of the master were certainly not clearly erroneous." (149 F. (2d) 461, 466).

3. The Decision Is Not of Importance In the Administration of the Act.

The issues passed upon by the Circuit Court of Appeals herein related exclusively to the particular factual situation involved. The decision would have but limited applicability to other cases. The Court was not called upon to decide whether or not certain activities constitute working time within the meaning of the Act, nor was the Court called upon to decide any other important question of Federal law, which has not been, but should be, settled by the Supreme Court. Rather, the Circuit Court of Appeals was required to review the evidence and the inferences which had been drawn therefrom; and the office of a writ of certiorari herein would be simply to permit a further review by this Court of the evidentiary details of a lengthy record. Certiorari is not ordinarily granted for this purpose, and there is no suggestion of any reason for the Court to deviate from its ordinary course in this particular case.

United States v. Johnston, 268 U.S. 220 (1925);

Southern Power Company v. North Carolina Public Service Company, et al., 263 U.S. 508 (1923).

Indicative of the fact that no great public interest is here involved, is the circumstance that the Wage and Hour Division of the United States Department of Labor (which as this Court may judicially notice has frequently appeared *amicus curiae* in important cases involving the administration or interpretation of the Fair Labor Standards Act) did not see fit to appear in this case.

4. The Circuit Court of Appeals Did Not Depart from the Usual Course of Judicial Proceedings.

The decision of the Circuit Court of Appeals involved essentially the application of the mandate established by Court rule (Rules of Civil Procedure, Sec. 53 (e) (2), 28 U.S.C.A. following Sec. 723 (c), that in an action tried without a jury, the Court must accept the Master's findings of fact unless clearly erroneous. It is well established that where the Master's findings are supported by substantial evidence, they cannot be said to be clearly erroneous. Upon reviewing the entire record, and finding that the Master's findings were supported by "abundant substantial evidence" (149 F. (2d) 461, 465) the Circuit Court of Appeals applied the rule which has been uniformly applied in a long series of cases.

Santa Cruz Oil Corporation v. Allbright-Nell Company, (C.C.A. 7th, 1940), 115 F. (2d) 604, 607;

Morris Plan Industrial Bank v. Henderson, (C.C.A. 2d, 1942), 131 F. (2d) 975, 976;

In Re Connecticut Company, (C.C.A. 2d, 1939), 107 F. (2d) 734;

Arrow Distilleries, Inc., v. Arrow Distilleries, Inc., (C.C.A. 7th, 1941), 117 F. (2d) 636;

In Re Chicago & N. W. Ry. Co., (C.C.A. 7th, 1943) 138 F. (2d) 753;

National Labor Relations Board v. Remington-Rand, Inc., (C.C.A. 2d, 1942), 130 F. (2d) 919.

CONCLUSION

It is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

BERT V. NUNNELEY,
Mt. Clemens, Michigan.
FRANK E. COOPER,
11th Floor, Ford Building,
Detroit 26, Michigan.
Attorneys for Respondent
BEAUMONT, SMITH & HARRIS,
Of Counsel.

August 31, 1945.

APPENDIX

Rule 53 (e) (2), Federal Rules of Civil Procedure, 28 U.S.C.A. following Sec. 723 (c), provides:

> "(2) *In Non-Jury Actions.* In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6 (d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 342

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL No. 1083, UNITED POTTERY WORKERS OF AMERICA, affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

Petitioners,

vs.

MT. CLEMENS POTTERY COMPANY,

Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

BRIEF FOR RESPONDENT

FRANK E. COOPER,
11th Floor, Ford Building,
Detroit 26, Michigan,

BERT V. NUNNELEY,
Mt. Clemens Savings Bank Building,
Mt. Clemens, Michigan,
Attorneys for Respondent.

BEAUMONT, SMITH & HARRIS,
Of Counsel.

REARDON-PARSHALL CO.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 342

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL NO. 1083, UNITED POTTERY WORKERS OF AMERICA, affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

Petitioners,

vs.

MT. CLEMENS POTTERY COMPANY,

Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

BRIEF FOR RESPONDENT

A. OPINIONS BELOW

The original opinion of the District Court (R. 239-248) is reported in 60 F. Supp. 146. The District Court's findings of fact and conclusions of law (R. 272-274) and a supplemental opinion by the District Court (R. 287-292)

do not appear to have been officially reported. The opinion of the United States Circuit Court of Appeals for the Sixth Circuit is reported in 149 F. (2d) 461.

B. JURISDICTION

The judgment of the United States Circuit Court of Appeals was entered May 21, 1945 (R. 1587). Certiorari was granted by this Court October 15, 1945. Petitioners aver that they invoke the jurisdiction of this Court "under the provisions of the Fair Labor Standards Act of 1938, 52 Stat. 1060, 1063, 29 U.S.C. Sec. 207 (a)" (Petition for Certiorari, p. 2); but it would seem that this statute has no bearing on this Court's jurisdiction in the premises.

C. GENERAL STATEMENT OF THE CASE

It has been necessary for counsel for respondent to write this brief before receiving a copy of petitioners' brief. Being on notice that the case was on call in this Court for the week of January 7, 1946, counsel for respondent sent their brief to the printer on December 31, 1945 (so that the brief could be printed and filed with the Court in due time), although at the last mentioned date no copy of petitioners' brief had been received. On January 3, a copy of petitioners' brief was received. It being too late to have the principal portion of our brief re-set and re-printed, we have appended at the end of this brief a separate reply to petitioners' brief.

The fundamental issue presented to the lower courts in this case, which is an employee suit for liquidated

damages under the Fair Labor Standards Act (Act of June 25, 1938, Public No. 718, 75th Congress, 52 Stat. 1060, 29 U.S.C.A. Secs. 201-219), was whether or not the petitioners (employees of respondent company) proved that in the course of their employment at respondent's pottery plant they did in fact (as was alleged in their behalf) customarily start work before the regular starting time. Their claim was that while the employer figured their hours of work from the regular starting time, they in fact started work ahead of the regular starting time, and had worked longer hours than the employer's records showed.

The Special Master before whom the case was heard found the facts to be as follows: (1) The petitioners, in accordance with the universally prevailing practice in industrial plants, normally entered the plant and punched the time clocks a few minutes before starting time, but this was immaterial because in instances where an employee arrived before starting time at that portion of the factory where his work was done, he waited for his fellow employees to arrive before starting work, and was free to spend such waiting time on his own behalf; and in fact in instances where an employee did so arrive before starting time he did spend the interval in conversation with fellow workers or similar activities; and under the particular facts of the case, such waiting time, where it occurred, was not working time (R. 199, 183, 185), and was not claimed by petitioners' expert witness to be working time (R. 1459, 1460); (2) there was no proof from which there could be computed with any degree of reliability either (a) the amount of time taken up by certain preliminary activities (such as putting on overalls and gloves, opening windows, turning on light switches, etc.) nor (b) the proportion of time so spent in advance

of the starting time, if any (R. 201, 169, 174, 201, 217); (3) actual productive work did not begin before the regular starting time (R. 191) and not infrequently began substantially after the regular starting time (R. 184, 191); (4) employees frequently quit work in advance of quitting time, and proceeded to wash up and wait for quitting time to punch out at the time clock (R. 179, 182); (5) generally, any finding as to the alleged amount of work, if any, done outside the regularly scheduled hours would be purely speculative and conjectural (R. 201). Accordingly, the Special Master recommended that the claims be dismissed (R. 214).

Exceptions were filed with the District Court. After hearing oral arguments, that Court accepted all of the Master's findings except his determination that actual production work did not begin before starting time. The District Court concluded that *some* employees (R. 272) did sometimes start actual production work early, and on the basis of the formula hereafter set forth (which was however made applicable to *all* employees in the case) the District Court entered a judgment against respondent for $2,415.74, plus costs (R. 297, 305). But as to all other points, the District Court ratified and approved the Master's findings. The District Court in fact specifically affirmed the Master's finding of fact that work did not begin the moment an employee punched the time clock (R. 244). The District Court further confirmed the Master's factual finding (R. 199) that time spent walking through the plant to the place of work was not, under the particular circumstances here involved, to be counted as working time (R. 241-243; this is pointed out in the petition for certiorari, pp. 7, 9).

The District Court's opinion made it clear that in the opinion of that Court, and under the facts presented in

this record, the respondent did not violate the law by failing to count as hours worked the time spent by the employees getting ready to start work (R. 241-244, inc. and R. 396, 397, 1494, 1499). The judgment which the District Court awarded petitioners was based on that Court's conclusion that actual production work started before starting time. Petitioners' major claim (that all time spent in the factory after entering and punching the time clock must be counted as hours of work) was denied.

The petitioners did not appeal from this finding and determination, nor did they file any cross appeal from the decision of the District Court. Accordingly, the Circuit Court of Appeals did not face the question which petitioners now seek to raise here as to whether the time which an employee spends after punching the time clock in walking to his place of work and waiting for other employees to arrive so that work may commence, must be counted as time worked.

The question remained, of course, when the employees did start work. As above noted, the District Court disagreed with the finding of the Master that work started at the scheduled starting time. The District Court, in rejecting this finding, held that it could be assumed that each employee who punched in early (the formula was not applied to those who punched in late) started work seven minutes after punching the time clock at the beginning of the day, and five minutes after punching the time clock at the resumption of work after the lunch period. On the basis of this formula, the District Court entered a judgment awarding petitioners approximately a penny a day additional wage payments.

The respondent appealed from this judgment to the Circuit Court of Appeals. That Court found the District Court to be in error in that it had overruled a factual

finding of the Special Master which was abundantly supported by substantial evidence and which was not in any respect shown to be "clearly erroneous" and which was therefore binding on the District Court under the plain requirement of Rule 53 (e) (2) of the Federal Rules of Civil Procedure (28 U.S.C.A. following Sec. 723 (c)). The Circuit Court of Appeals further ruled that the arbitrary formula applied by the District Court produced a judgment based on surmise and speculation, and was hence invalid. Accordingly, the Circuit Court of Appeals ordered the complaint dismissed.

The petition for certiorari suggested that petitioners were entitled to have treated as hours of work all hours and minutes elapsing from the moment an employee punches the time clock on entering the plant in the morning until the moment he again punches the time clock on leaving the plant. But this question is not properly before the Court; for the ruling of the District Court was adverse to petitioners on this point; and petitioners did not in any way appeal this adverse judgment to the Circuit Court of Appeals nor otherwise save the question; it is too late to raise the issue now. The only question which can be here presented, it would appear, is whether the Circuit Court of Appeals was correct in vacating the judgment of the District Court; or whether, on the other hand, the judgment of the District Court should be reinstated.

D. QUESTIONS INVOLVED

Thus, as the case comes to this Court, it presents very narrow issues.

1. The first is whether or not the Circuit Court of Appeals correctly determined that "there was abundant

substantial evidence to support the findings of the special master and it could not appropriately be said that such findings are clearly erroneous" (R. 1595, 149 F. (2d) 461, 465). Under the findings of fact by the Master, there can be no question but that petitioners' cause must be dismissed. As the District Court said, the Master found that the claims of plaintiffs (petitioners herein) as to starting work early were not true (R. 241). Therefore, unless upon a review of all the evidence it should be concluded that the Master's findings are clearly erroneous *and not supported by* substantial evidence, there can be no further question presented. Unless the Master's findings can be so characterized, they are binding on the Court. Rule 53 (e) (2), Federal Rules of Civil Procedure.

2. If on a review of all the evidence it should be concluded that the Master's findings were clearly erroneous and therefore not binding upon the District Court, a second question would arise as to whether or not the formula adopted by the District Court produced a judgment based upon surmise, speculation and conjecture, and hence invalid. The Circuit Court of Appeals so held.

3. If the judgment of the Circuit Court of Appeals should be held to be in error on both of the foregoing points, then the question would arise as to whether the dismissal of the claims was justified on the basis (urged by respondent below) that there should be off-set against the claims of petitioners, as allowed by the District Court, the amounts of extra compensation which had been voluntarily paid them by respondent during the period involved.

E. STATEMENT OF FACTS

I. Outline of Proceedings in Lower Courts

1. THE PARTIES

This action was filed in April, 1941, by Local 1083, United Pottery Workers of America, C.I.O., and seven members of said Union, asserting various violations of the Fair Labor Standards Act (52 Stat. 1060; 29 U.S.C.A. Sec. 201-219) on the part of the Mt. Clemens Pottery Company. The complaint contained the usual recital that the action was brought on behalf of all similarly situated employees. Identification of these represented parties was accomplished (under an order of the District Court, R. 29), by the filing of individual designations. Approximately 280 employees or former employees signed such designations, and under the ruling above referred to were admitted as additional parties plaintiff (petitioners herein).

The defendant (respondent herein) is a Michigan corporation with its office and place of business at Mt. Clemens, Michigan, where it operates a plant (the largest single unit Pottery plant in the United States, R. 1108), employing approximately 1000 to 1200 persons during the period involved herein (R. 382), devoted to the manufacture of dinnerware—plates, cups, saucers, etc. It has been in business for about thirty years (R. 1086). Substantially all of its employees (exclusive of office help and maintenance workers) are paid on incentive or piece rates above a guaranteed hourly wage, so that their compensation normally depends on the number of pieces which they process during the course of a day.

2. THE PLEADINGS AND THE ISSUES

The complaint, filed April 16, 1941, charged principally that the time clock cards of the respondent company were so rigged or "doctored" that the figures punched on the cards did not correctly reflect the actual time at which the card was punched. Paragraph 7 of the complaint charged, in part, that the respondent deliberately falsified the records of the time worked by its employees; that the employees worked fourteen minutes in advance of the time shown on the time clocks in the morning of each working day; that the time clocks maintained by the Company indicated that employees stopped work for lunch at 11:45 A.M., whereas, in fact, each employee was required to continue working until 11:55 A.M. etc. (R. 10). This charge was later specifically abandoned (R. 386; Tr. of Dec. 15, 1941, p. 24).

The complaint further charged (par. 4 and 5, R. 8) that the Company worked its employees forty-five hours a week from October 24, 1938 until the time of the filing of the action. This claim likewise was superseded and no evidence in support of any such claim was offered. The complaint also charged (par. 6, R. 9) that certain employees performed homework without compensation. It may be noted that the only reference to homework in the testimony was the volunteered statement of one of petitioners' witnesses that she was not permitted to do decalcomania work at home (R. 145, 871). This charge was later stricken from the complaint (R. 56).

The complaint was drafted in vague and general terms, and failed to specify with any precision what claims were made on behalf of particular employees, or what employees were claimed to be represented. The respondent

company accordingly filed a motion (R. 17) seeking to limit the scope of the action to the named plaintiffs (petitioners here), and seeking to strike certain allegations in the complaint, and seeking a bill of particulars. On June 13, 1941 the Court entered an order (R. 29) requiring the filing of written designations by all employees wishing to be represented in the action and requiring petitioners to file a bill of particulars.

In October, 1941, petitioners filed a bill of particulars, so-called (R. 42), which did not give any substantial additional information. It alleged that all of the employees listed in the designations filed up to that time claimed overtime compensation; but there was no allegation as to how much overtime was claimed.

The Company thereupon filed a motion for further particulars (R. 48), and on November 10, 1941 the District Court entered an order (R. 56) requiring the furnishing of some but not all of the further particulars which had been sought. Pursuant to this order there was filed on or about November 27 an amendment to the bill of particulars so-called (R. 59) which charged that what the petitioners complained of was the practice of the Company of crediting employees with working time only from the succeeding quarter hour when an employee checked in and to the preceding quarter hour when the employee checked out. It charged that under this practice the Company "has deducted from the time worked, as shown on said time cards, a period of as much as 56 minutes each day" (R. 60).

Thus originated the claim that employees had worked fifty-six minutes a day beyond the time shown on the Company's records. This claim was repeated endlessly throughout the course of hearings thereafter, but no proofs in support of any such claim were ever offered.

This amended bill of particulars also raised a number of new charges, many of which were later dropped.

The filing in November, 1941, of the amendment to the bill of particulars, containing numerous charges which were never pressed, coincided with the calling of a second organizational strike at the Pottery plant (R. 1299). Within a week after the filing of this so-called amendment to the bill of particulars there was served a motion for judgment by default (R. 74) which was denied without argument (R. 381). In January, 1942, petitioners filed another motion for judgment based on the theory that they were entitled to a summary judgment because of the statement in the answer filed by respondent that employees were not paid for periods when they were in the plant but not working prior to the start of work or subsequent to the close of work (R. 117). It was in this motion—filed after the suit had been pending some nine months—that petitioners first adopted the theory that their hours of work included all the time which they spent on the employer's premises. This motion likewise was denied (R. 137, 139), the Court pointing out that employees cannot start work the minute they punch the time clock (R. 396, 397).

Thereupon the cause was referred to Donald L. Quaife, Esq., as Special Master (R. 140).

The case presents the rather unique situation that most of the claims alleged in the complaint, and many of the claims brought into the case through the bills of particulars, were abandoned.

On the trial, the issues were reduced to four claims, quite different from those set forth in the complaint and the bills of particulars. As enumerated by the District Court (with the acquiescence of counsel for petitioners)

at the hearing of December 15, 1941, a few weeks prior to the opening of the trial before the Special Master, the claims on which the petitioners were to go to trial were as follows: first, that employees were getting paid for less time than the time clocks showed they were entitled to; second, that some of the cards did not show the exact number of hours worked, that more hours were worked than shown on the cards; third, that money had been paid to a fictitious third person and that the employees had, as a result, worked on uncompensated labor (R. 391). Subsequently and during the course of the hearings before the Master there was added a claim for wage deductions. As stated during the trial, there were four claims: (1) Fifty-six minutes per day extra time worked, as shown by the time clocks, which was not computed by the Company as hours worked; (2) charity work; (3) payment of the so-called "invisible man;" (4) unauthorized deductions for equipment that the employees had to buy from the employer (R. 562).

It is significant that both the Special Master and the District Court held against petitioners on each of these claims. After the proofs were introduced, the only issue left in the case was whether any of the petitioners started work at some point of time after punching the time clock but before the regular starting time.[1]

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[1] The record clearly discloses, we submit, that neither the claims made in the pleadings nor the claims on which petitioners finally went to trial, were made in good faith. The record, further, abundantly reveals that during a course of proceedings that lasted over three years in the District Court, counsel for petitioners sought persistently to impress these claims on the District Court, in the apparent hope of persuading that Court that petitioners, as was repeatedly asserted, had been "gypped." The petitioners claimed that appellant was the only Company in the world which computed hours of work in the way of which petitioners complained (R. 388). It

While it would seem clear that the issues framed on the proofs by the District Court's decision and the Company's appeal therefrom to the Circuit Court of Appeals (there having been no cross-appeal on behalf of the employees) finally crystallized the questions to be ultimately considered, yet the petition for certiorari seems to suggest that there should be re-opened in this Court questions which had been decided against petitioners below, and which they had not appealed. This, we think, cannot be done.

On the proofs submitted, and the proceedings had in this case in the lower courts, the only substantial issue presented on the merits of petitioners' claim is whether or not petitioners, or any of them, started work a few minutes before the regular starting time, on occasions where an employee entered the plant before the time for starting work and where there was no absolute physical impediment to his starting work a few minutes before the regular starting time. (In some cases, as hereinafter discussed, it was physically impossible to start work early). The employer in computing the employees' hours of work made the calculation on the basis that employees started work at the regular starting time; but it was claimed on

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was shown, however, and not contradicted, that substantially all companies use the same method, i.e., figuring hours of work from starting time to quitting time, disregarding the fact that employees enter the factory a few minutes before starting time and leave a few minutes after quitting time (R. 170). Incidentally, the propriety of this method is recognized by the Wage and Hour Division of the U. S. Department of Labor, Exhibit 113 (R. 1471, reproduced at R. 1580). The claims of mistreatment had no connection at all with the facts. For example, it was claimed that the Company required common laborers to pay for the cost of carriages used in pushing ware about the plant (R. 383). These carriages cost $50 to $500 (R. 1149). It was uncontradicted that the employees did not pay for

behalf of the employees that they sometimes started work a few minutes before starting time, and had therefore in fact worked a little longer than was indicated by the Company's records. Such increment would in some cases carry an employee's total hours for a week into the brackets (over forty-four hours from October 24, 1938 through October 23, 1939; over forty-two hours from October 24, 1939 through October 23, 1940; and over forty hours subsequent to October 24, 1940) where the Fair Labor Standards Act (52 Stat. 1060, 29 U.S.C.A. Sec. 201-219) requires payment of overtime compensation equal to at least once and one-half the employee's regular rate of pay. It was conceded that even if the employees did prove that they had worked a few minutes longer than the Company's records showed, they had nevertheless been compensated for such extra time at their regular straight time rates (because of the piece rate nature of their compensation) but it was claimed that additional half time should be paid for any such additional minutes of work that might be proved, if such extra minutes carried the total hours beyond the point at which the statute requires payment at once and one-half the regular rate.

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them (R. 1149). The record shows that on or about December 6, 1941, an action was filed by counsel for petitioners herein in the Court of Common Pleas of Lucas County, Ohio, in the name of twelve employees of the Pottery Company, making similar charges of violation of the Wage and Hour law. A certified copy of the complaint was introduced as Exhibit 111 (R. 1449, reproduced at R. 1569). At the time of the filing of the suit a writ of garnishment against the S. S. Kresge Company was applied for seeking to tie up $40,000.00 owing to the Pottery Company (R. 1578). Three of the plaintiffs in the Toledo suit (Eric Sopha, Alice Stoll, Andrew Hirsner, or Heisner) were also named as plaintiffs or designated parties in the present action (R. 279, 284). At least two of the plaintiffs (Carl

3. THE FINDINGS OF FACT BY THE SPECIAL MASTER

The findings of the Special Master, after pointing out that none of petitioners' asserted claims had been proved, discussed in detail the question as to whether any of the petitioners had started work ahead of starting time. This of course involved a determination as to what activities should be included as work. As to the broad claim that all the elapsed time between the particular minute when an employee punched the time clock on his way in to work in the morning, and the particular minute when he punched the time clock on leaving the plant after quitting work, must be paid for regardless of when the employees actually started or quit work, the Master found as a fact (R. 179) that this claim could not be sustained.

Noting that the testimony showed it to be the uniform practice in industrial plants for employees to punch the time clock several minutes before starting time (R. 1242-1244; 1341; 1359-60; 1459), and noting the testimony of petitioners' expert witness that the time of punching the time clock has no relationship to the time of starting work (R. 1459, 1460), and noting likewise the long estab-

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Starner and Robert Fitton) named in the Toledo action did not even know that they were being named as plaintiffs and did not at any time authorize the bringing of the suit in their names (R. 983-84, 999, 1063). Indicative of the character of this proceeding is the fact that it alleged (and the allegation was supported by affidavit of counsel for petitioners) (R. 1575), that Robert Fitton, who was named as a plaintiff, was required by the Company foreman to punch time clocks out and then return to work to finish oiling molds (R. 1573). The fact is that Robert Fitton was the foreman, and his testimony is clear that he never permitted any employees to do this (R. 988-89). Certain it is that he never was ordered by himself to do something which was not a part of his job.

lished custom in all industrial plants that such time was not considered working time (R. 1237, R. 1340, R. 1460), and noting also the particular facts of the case—the lack of physical exertion, the lack of control by the employer, the freedom of the employee to choose his own course through the plant, his freedom to interrupt his trip to converse with other employees or otherwise spend his time as he pleased, and all the other factual conditions which indicated that walking from the time clock to the place of work was no different *than walking* from the employees' home to the plant—the Master found as a fact that the time so spent was not working time.

The Master also found that in some instances an employee might have arrived at his place of work before the starting hour, and he found the fact to be that in such instances, if employees arrived in their department early enough to have some waiting time, they were free to and did in fact spend such time on their own behalf; frequently spending their time in conversation with other employees (R. 183, 185, 199). The Master further found that while it could not be determined from the evidence how much time any employee might have thus spent in his department before starting work on any day or during any week, yet under the conditions which were shown to exist, the time involved could not be deemed working time.

The Master also gave painstaking consideration to the question as to whether petitioners performed prior to the regular starting time any preliminary or preparatory activities which might be said to be a part of their hours of work. The Master found that many of these activities were purely personal in nature. In some of the departments there were no such preliminary activities. This was true, for example, in the glost belt department, the

largest department in the plant (R. 170). In other departments, the employees would have nothing to do that would take more than a few seconds, such as picking up a brush, filling a pail with water, or picking up a sheet of decalcomania (R. 990-991, 1402, 1403, 1178). There was substantial testimony that these activities occurred after the regular starting time and not before (R. 989, 993, 1011, 1182, 1403).

The Master found that the amount of time spent in preliminary activities was not claimed to be more than two or three minutes (R. 174); and that in fact the amount of time so spent varied widely with the different departments, with different individuals in the same department, and with the same individual on different days (R. 169, 174).

There was found to be a similar variation as to when these preliminary activities were performed—whether before or after starting time. It was further found that neither the amount of time taken by such preliminary activities, nor the proportion of it (if any) spent in advance of the established starting time could be computed for any employee (R. 201). Therefore, whether or not such preliminary activities were "work" was immaterial to the case—the employees had not proved that any time spent in such activities would, if such time were counted as work, increase their total hours to the point where additional overtime payments would be required.

There remained the vital question on which the District Court refused to accept the Master's factual finding, as to whether actual production work started before starting time. The Master's report discussed this fully. It was noted that certain of petitioners' witnesses testified that they went directly to their department after

punching in and then started work. After carefully reviewing the testimony, pointing out that witnesses who so testified had been impeached (R. 180 et seq.); that their testimony was indefinite and inconsistent (R. 180, 183); that some of the petitioners' witnesses did not claim that they started work on arriving in the department (R. 180); and that a mass of circumstantial evidence tended to disprove this claim (R. 183-191), the Master refused to accept this testimony.

Instead, he accepted the testimony of the Company's witnesses (which was not impeached, and was supported by circumstantial evidence and by admissions obtained from many of petitioners' witnesses on cross-examination) that work did not start until the established starting time (R. 191).

He recognized the possibility (R. 191) that in some instances an employee might possibly have started work shortly prior to the starting time—in rare cases where an employee might have "jumped the gun" a minute or two (R. 173). The Master did not find as a fact that this had happened. He recognized it only as a possibility, which had not been definitely disproved. As to this possibility, the Master found the fact to be that if in some instances work was commenced shortly prior to the regularly established starting time, such instances were counterbalanced by occasions when work was started after the starting time and by admitted occasions when work was stopped several minutes before quitting time (R. 191).

4. THE JUDGMENT OF THE DISTRICT COURT

On objections to the report of the Special Master (R. 218), the District Court, without taking additional testimony, concluded that "while in the main agreeing" (R.

241) with the findings of the Master that the allegations of petitioners as to starting work early were not true, nevertheless a limited recovery should be allowed some of the petitioners, on the theory that they may have started actual work before starting time.

With this one exception, all of the findings of the Special Master were confirmed and adopted by the District Court (R. 272). The District Court specifically held that on the facts here involved, working time did not begin the moment when employees punched the time clock (R. 244). The District Court likewise affirmed the Master's finding that under the circumstances of this case the time spent by employees in punching the time clock and walking to their departments and there perhaps, on occasion, waiting for their fellow workers to arrive, was not working time (R. 241-244; see also R. 396, 397, 1494, 1499). Instead (as pointed out in the petition for certiorari, pp. 7, 9), the District Court held that time spent in such activities, was on these facts not to be deemed hours of work.

The District Court found no error in but rather disregarded the finding of the Master that if in some instances work was commenced shortly prior to the regularly established starting time, such instances were counterbalanced by occasions when work was started after the starting time and by admitted occasions when work was stopped several minutes before quitting time. The District Court, in fact, in its opinion specifically referred to the circumstance that at the close of work many personal duties occupied the employee's time before he actually punched out (R. 244); but while thus accepting this finding of the Master, the District Court completely overlooked it in reaching the formula described below.

The District Court's judgment was based on the premise that a recovery should be allowed those petitioners who had entered the factory earlier than the Court believed was necessary to have permitted them to start work at starting time. In view of the fact that the District Court was of the impression that most of the employees normally punched the time clock more than seven minutes before the time set for starting work, and in view of that Court's conclusion that if the employees were in the plant more than seven minutes before starting time it would be possible and in fact likely, as the Court thought, that the employees would begin work early; the Court adopted the formula that there should be added to the hours of work of each employee the number of minutes by which the time when such employee punched the time clock preceded seven minutes to starting time at the beginning of the day, or preceded five minutes to starting time at the beginning of work after lunch (R. 244, 273). In other words, an employee who punched in at seven minutes before starting time in the morning would not be given credit for any extra work, but an employee who punched in at eight minutes before starting time in the morning would receive credit for one minute's extra work regardless of whether or not there was any testimony whatever that the employee started work before starting time; and an employee who punched in at ten minutes before starting time in the morning would receive credit for three minutes extra work, etc. In the afternoon an employee who punched in at seven minutes before starting time would receive credit for two minutes extra work, an employee who punched in at eight minutes before starting time would receive credit for three minutes extra work, and an employee who punched in at ten minutes before starting time would receive credit for five minutes extra work, regardless of whether or not

there was any evidence that such employees worked such extra minutes.

The District Court's Findings and Conclusions (R. 272) directed the Company to compute the amount due each individual under this formula. Such computations (R. 276), which were later incorporated as a part of the judgment of the Court, disclosed that of the 289 persons represented in the action, 45 had no claim for overtime under the formula, 59 had a claim of less than $1.00, 85 had claims between $1.00 and $5.00, 71 had claims between $5.00 and $10.00, 23 had claims between $10.00 and $15.00, 4 had claims between $15.00 and $20.00, and 2 had claims between $30.00 and $36.00 (R. 289). The total amount of extra compensation for overtime (figured as required by the Court's opinion) was $1,207.87 for 289 individuals; or an average of not quite $4.18, for a long period of time, representing an average of approximately one cent a day. Pursuant to the statute, liquidated damages in equal amount were added; and the Court directed the allowance of a $2,000 attorneys fee to be taxed against the employer as part of the costs (R. 297).

5. THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS

From the judgment so entered, the Company appealed to the Circuit Court of Appeals for the Sixth Circuit. That appeal presented the following principal points to the Circuit Court; (1) There was no evidence to support the arbitrary formula adopted in the District Court's opinion as the basis for its judgment, and the formula must be rejected as one based wholly on surmise and conjecture and inconsistent with admitted facts; (2) the Master's findings of fact were abundantly supported by the evidence and depended in part on the Master's im-

pressions as to the credibility and reliability of the witnesses, and since no clear error was asserted or found to exist as to any of these findings, the District Court should have accepted them under Sec. 53 (e) (2), Rules of Civil Procedure; (3) there was no evidence in the record as to whether any of the employees actually did work or could have done any work during the time they were in the plant before starting time; (4) in any event, the judgment should be vacated on the basis that extra compensation which respondent company had voluntarily paid the petitioners each year (equal to approximately four per cent of their annual wages) over and above their agreed wages and overtime, should be applied by way of set off to reduce and eliminate the amounts of extra compensation which the District Court had found to be due some of the petitioners.

The Circuit Court of Appeals found that the Master's findings of fact were all supported by substantial evidence; that none of them were clearly erroneous; that these findings of fact should therefore be accepted; that on the basis of these findings of fact it was clear under the decisions of this Court that petitioners' action must be dismissed (R. 1595, 1597).

Thus, the Circuit Court of Appeals accepted and adopted the Master's findings *in toto*. Most of them had been previously adopted by the District Court. This, then, is a case where the provisions both of Rule 52 (a) and Rule 53 (e) (2) (Federal Rules of Civil Procedure, 28 U.S.C.A. following Sec. 723 (c)) require that the Master's findings should not be set aside unless clearly erroneous.

The Circuit Court of Appeals further found that the arbitrary formula applied by the District Court pro-

duced a judgment based upon surmise and conjecture which could not be sustained (R. 1596).

Accordingly, the Circuit Court of Appeals ordered the judgment of the District Court reversed, and the cause of action dismissed.

II. Analysis of Testimony

1. GENERAL NATURE OF PROOFS

It appears from the record that each of the departments of the Mt. Clemens Pottery Company had established times for starting and stopping work (which were different for different departments and were subject to certain variations as production requirements changed, R. 1111, 1120), and that employees were permitted to check into the plant at any time during the 14-minute period preceding the starting time for their particular department, not for the purpose of beginning work, but only for the employees' convenience (R. 1112). The time clock cards did not show the time during which employees were required to be on duty, or to be on the Company's premises, or to be at any prescribed work place, but on the other hand showed rather the time of the employees' entry to or exit from the plant (R. 1125-1130). On entering the plant, employees punched the time clocks but did not begin work until an established starting time, and respondent did not suffer or permit any of the employees to begin work prior to the established starting time (R. 811, 1126). On or before the completion of the established working periods, the employees ceased working and were required to leave the plant within fourteen minutes thereafter, and the Company did not suffer or permit any of its employees to continue at work after stopping time (R. 1111). The employees were not charged with any

duties for periods (from one to fourteen minutes in duration) when they might be in the plant prior to the established starting time or subsequent to the established stopping time (R. 990, 1041, 1173, 1180, 1406, 1303).

In using the time clock cards in determining the hours of work, the Company computed working time as beginning from the established starting time (which normally would be the even quarter hour following the minute when the employee punched in) until the quitting time (which normally would be the even quarter hour preceding the minute when the employee punched out). Where an individual worked overtime, such time was added. This is in accordance with the regular practice in all plants, as testified by petitioners' witnesses as well as by respondent's witnesses (R. 1459-61, 1237, 1340). The practice was also supported by many years experience at this plant. It had been determined from actual observation over a period of years that intervals of fourteen minutes were necessary in order to permit the employees to reach their departments and be ready for work at the regular starting time (R. 1111-1127).

There was no proof and really no claim that any employee was deprived of credit for work performed after quitting time because of the Company's adherence to the uniform industrial practice of computing the termination of the employees' hours of work at the regular quitting time (i.e., the even quarter hour preceding the minute when the employee punched out). In fact, petitioners' witnesses freely admitted on cross-examination (and it was the finding of both the Master—R. 175—and the District Court, R. 244) that employees on frequent occasions quit work before the regular quitting time, but waited until after the quitting time to punch out.

We face then solely the question as to whether or not some of the employees occasionally started work before the regular starting time and whether any of them put in a few minutes more work than the Company's computations gave them credit for.

No proof as to this principal issue was offered by the petitioners except for the testimony of eight members and officers of the Union. The testimony of these individuals relates almost exclusively to their own claims; and there is no substantial testimony as to any of the other 280 petitioners ever having started work before the regular starting time, nor is there any proof whatever as to how many seconds, minutes, or hours that any of the eight witnesses or any of the other employees worked during any week, other than as shown by the records of the Company.

Furthermore, it is, we believe, not without significance that these witnesses, for the most part, contented themselves with saying that they punched their time cards and went to their department. Some of petitioners' witnesses, as will be pointed out in more detail *infra*, did not even venture the general assertion that on arriving at their departments they went to work. Obviously, witnesses who limited themselves to saying that after punching in they went to their departments have not established even a *prima facie* case. Other witnesses who testified in general terms that after punching the time clock they did go to their departments and started work, admitted that they could not say just when they started work, and conceded that if they attempted to fix any time prior to the established starting time as the time when they started work it would be only a guess. This circumstance was relied on by the Special Master (R. 180).

No compilations of any kind were introduced to support this very general testimony, although the Company's records had been available for petitioners' examination for many months, and although it seems obvious that, at least if any of the employees believed that they were working longer hours than they were given credit for, they would have had some idea as to how early they started work. We think this suggests that it is true of all the petitioners, as admitted by witness Metz, that it never occurred to them that they were working more time than the records of the Company showed (R. 651).

It is significant that less than 300 employees or former employees (out of a group of 1200 employees and as many as 500 additional former employees) elected to join in the suit, despite the solicitations that were made (R. 585, 705, 782, 956). This indicates that the vast majority of employees knew they had no just claims.

The eight petitioners who testified represented only four departments out of the twelve departments in the plant whose employees were involved, viz: the Clay Shop, the Decorating Department, the Brushing and Dipping Department, and the Glost Belt Department. Since somewhat different considerations are applicable in the different departments, we shall examine in some detail the testimony as to each department on the issue of whether work ever started before the established starting time. However, certain of the facts are generally applicable to all departments, and these may be discused at the outset.

2. ESTABLISHED CUSTOM OF INDUSTRY

As above noted, it was the practice of the Mt. Clemens Pottery Company to compute as hours of work the time elapsed from the regular starting time to the regular

quitting time, and to exclude periods not in excess of fourteen minutes which were allowed to employees to come in to work and to go out. It should be borne in mind, also, that ordinarily much less than this amount of time was taken by the workers. As shown by the cards, most of the punch-ins occurred during the period between fourteen minutes and five minutes before starting time; and most of the punch-outs occurred during the first ten minutes after the hour, many of the workers quitting work before quitting time so as to reach the clock a minute or two after quitting time.

If this practice is in violation of the Wage and Hour law, then practically every employer in the country is likewise violating the law. The testimony is uncontradicted (and it has come from petitioners' witnesses as well as from respondent's witnesses, R. 1459) that the universal practice is to compute hours worked from the regular starting time to the regular quitting time.

Joseph D. Fox, a witness called by the defendant, who formerly had been an inspector with the Wage and Hour Division of the United States Department of Labor and was at the time of the trial connected with the Industrial Advisors Bureau (R. 1235) and who had inspected some 350 plants and examined thousands of time clock cards (R. 1241), testified that the general practice in computing hours worked is to assume, if an individual has punched in at or before the regular starting time and has punched out after the regular quitting time, that he worked from starting time until quitting time (R. 1237). He never had found a plant which computes hours worked from the minute the employee rings the time clock (R. 1237). The usual requirement is that the employee be in his department ready to work at starting time (R. 1239). He did not know of any plant that only required the employee

to pass the time clock at starting time (R. 1239). The time clock, he had found, is used primarily as an attendance record; and that the employee is expected to be at his bench and ready to work at starting time. It was his experience that time clock cards are normally punched from five minutes to twenty-five minutes before starting time (where employees live within easy streetcar distances of the plant) and often an hour or more before starting time where workers come from greater distances (R. 1242). He testified that examination of a sampling of the time clock cards of the Mt. Clemens Pottery Company indicated that the interval between the punch-in time and the time when work started was the same as in other plants (R. 1244).

Mr. Pierce E. Wright, who had been engaged in labor relations work for twenty years and was familiar with the practice in some 100 factories in Michigan (R. 1339), similarly testified that hours of work are customarily computed from the starting time to the quitting time (R. 1340) and that actual studies he had made revealed that most employees punched in six minutes to fourteen minutes before starting time, with the greatest bulk from nine to fourteen minutes before starting time (R. 1341). This is true in plants where employees are not allowed to punch in more than a quarter of an hour before work begins. In plants where thirty minutes leeway is allowed (see Ex. 66-73, R. 965, 1350, 1463, 1473, reproduced at R. 1537-1542), many workers come in more than a quarter of an hour before starting time (R. 1341). Mr. Wright also testified that the time clock cards of the petitioners' witnesses showed patterns of punch-ins and punch-outs which were entirely typical of the general pattern he had observed in studying more than ten thousand cards (R. 1359). He pointed out that there is nothing unusual

about an employee punching in a time clock at fourteen minutes before starting time every day for two weeks or more in a row, because some workers are invariably "early birds" and are at the plant when the time clock opens, and the first twenty-five men to go in will all have their time recorded at fourteen minutes to the hour (R. 1359-60). He further testified that these practices are customary in plants operated under collective agreements (R. 1361), and he prepared (R. 1350) a compilation of clauses from collective agreements and shop rules illustrating the general practice (Ex. 92, R. 1350, 1473, reproduced at R. 1549).

Similar testimony was given by Mr. James H. Wishart, Research Director of the United Automobile Aircraft and Agricultural Implement Workers, CIO, who was called by petitioners as an expert (R. 1450). He explained that employees in most plants operating under agreements with his union, the U.A.W.-C.I.O., are allowed to come in as much as a half hour before the actual beginning of work, and that they stand around smoking and gossiping, and that they take their coats off and punch the time clock and are expected to be in their departments at the regular starting time (R. 1459-60). He said, "the punching of the time clock is immaterial in determining the exact beginning of work" (R. 1459), and explained that the punching in does not bear any relationship to the actual starting time, the time clock being used primarily to indicate the presence of the worker in the plant for that day (R. 1460). He added, "the actual punching of the clock will not coincide with the starting of work" (R. 1460). Using almost the same words as respondent's expert witnesses, he said further that if the employee is punched in and is in his own department, it will be assumed, under the general practice, that he starts work at starting time (R. 1460).

One of the petitioners' witnesses, Earl Larimer, who at the time of the hearing was employed at a large plant in Detroit where the employees are represented by a CIO union, testified that in that plant he usually punched in thirty minutes early and was supposed to be on the job when the starting whistle blow, and that his hours of work were figured from the starting whistle to the quitting whistle (R. 711). As an instance of the common practice, it is interesting to note that in *Ackroyd, et al. v. Chrysler Corporation*, Case No. 3573, in the District Court of the United States for the Eastern District of Michigan, Southern Division, paragraph 11 of a stipulation of facts agreed to by the parties therein, and placed in the Court files, sets forth that from October 24, 1938 to June 27, 1942 hourly rate employees, not including plant protection employees, of Chrysler Corporation in the Detroit area, rang in at their time clocks on the average of 16.58 minutes *before their work began each day.* That case involved a claim by several plant protection employees in the Chrysler plants in the Detroit area that they started work before the regular starting time, having certain duties to perform before shift time.

It is interesting to note that the Mt. Clemens Pottery Company differs from most pottery companies in that it employs a time clock card system, even for workers who are employed on a piece-rate basis, as are some 98 per cent of the employees of respondent (R. 1226, 1280). Eighty per cent of the pottery industry operates under a collective agreement (to which the Mt. Clemens Pottery Company was formerly a party, R. 1278) under which it is provided that time clocks may be installed only through an agreement entered into between the plant and the local union (R. 1109). In most potteries, the custom is to use time clocks only for a few hourly-rated employees, and

the only record kept as to the hours of work of all the other employees is in the form of a time book kept by the foreman showing the number of hours which each employee worked each day (R. 1108).

3. REASONS FOR FOLLOWING THIS METHOD OF COMPUTING HOURS WORKED AND FACTORS SHOWING ITS FAIRNESS

Time clock cards were put into general use in the Mt. Clemens Pottery Company about 1933 (R. 1109). The same method of computing hours of work has been followed ever since that time (R. 1110, 1184). The Company's determination of the number of hours each employee has worked is recorded daily on the time clock cards themselves, and each employee knows each day the hours of work that have been recorded for him during the preceding days (R. 1110). The testimony of all the employees and former employees who were asked about this, including both petitioners' and respondent's witnesses, was uniformly to the effect that all the employees understood this system; and that it had been employed without variation since 1933. The practice of recording on the time clock cards a notation of the number of hours worked daily was primarily for the convenience of the employees. The Company also kept permanent records showing the hours of work of each employee and all other data required by the regulations of the Wage Hour Division, e.g., Ex. 80 (R. 1150, 1300, reproduced at R. 1544). It must be clear that the Company would not have continued this practice had it wished to evade the law.

As a matter of fact, under the employment contracts of the petitioners it would have been neither inconvenient nor expensive to the Company to have reversed the system and charged an individual with having started work

at 7:00 o'clock if he punched in between 7:01 and 7:15, and charged him with having worked until 4:15 if he punched out at any time between 4:01 and 4:15. It is clear, and was admitted (R. 595, 597) that this practice would have an adverse effect on the employees in that it would decrease the actual working time available in a forty-hour week and decrease the earnings of employees whose earnings depended on what work they produced in the forty hours allowed.

Furthermore, if the Company had been making an attempt to "gyp" the employees as had been so persistently charged, it is hard to explain why the Company voluntarily increased the rates of pay (R. 188, 647, 444) or why it voluntarily set up and carried out a scheme for paying extra compensation under which employees got two weeks extra wages annually (R. 1161) and continued to make these payments even though it was under no agreement with the employees that any such payments would be made (R. 1161).

Of course, if the employer had attempted to give the employees credit for less hours than those actually worked, it would have followed the custom (which is entirely permissible under the law and so recognized by the Wage and Hour Division, and is, in fact, very common in the pottery industry) of having the foremen record in a time book each day the number of hours that each employee worked that day. If this system had been followed, the Union could not have concocted the novel theory here presented, for there would not be a clock card record of the time employees entered the plant. Of course, the same amount of time at least would have been required to get employees in and out of the plant.

Again, had any question ever been raised by the employees, as it doubtless would have been (R. 190), had it

ever occurred to the employees that they were working longer hours than the Company records showed (R. 651), it would, of course, have been easy for the Company to have divided the work among the employees so that instead of working five days one week and four days the next week (which was a typical pattern, as shown by the time clock cards in evidence), the employees would have worked four and one-half days each week. This, again, would be a practice which would not cause any added expense or inconvenience to the Company but would have been inconvenient to the employees. It would have reduced the total hours of many if not all employees to a total of less than 40 a week, however figured.

We think the only conclusion which can be reached from these circumstances is that the reason for using this method of computing time was not that it permitted the Company to cheat or defraud employees. Rather, the reason for the practice, both in this plant and in all other plants, is the impossibility of getting all the workers in at once. Many plants (R. 1341, Ex. 66-73, 92, R. 965, 1350, 1463, 1473, reproduced at R. 1537-1542, 1549) set up a 30-minute period for the purpose of getting employees into the plant. This Company, however, reduced the period to fourteen minutes, which experience showed to be the minimum time required (R. 1111). The employees of the Pottery lived in various parts of Macomb County and many of them drove to work in automobiles; and it has been true for many years that a majority perhaps of the employees figured on leaving home early enough so that they could reach work in time even though they experienced a flat tire or some mechanical difficulty en route (R. 1276, 677). If they had no trouble, they often arrived early. To permit an orderly system of operation and an accurate determination of the hours of

work of each employee, the Company (many years before the Wage and Hour law) determined the minimum amount of time required to permit the employees to pass through the time clocks, reach their departments, and begin work. It was found that this minimum was fourteen minutes. The result was that employees were instructed that they must not punch in at the time clock more than fourteen minutes before starting time and were instructed not to start work before the starting time (R. 811, 1018, 1126; Tr. 2534).

These matters are reviewed in the report of the Special Master, and the Special Master considered that such circumstantial evidence was persuasive, particularly in view of the conflicting and inconsistent testimony of the petitioners (R. 183).

4. FACTORS SHOWING PHYSICAL IMPOSSIBILITY OF EMPLOYEES STARTING WORK IMMEDIATELY AFTER PUNCHING THE TIME CLOCK

a. Size of Plant

In the first place it must be borne in mind that this plant is nearly a quarter of a mile long (R. 968) and more than 8¼ acres are under roof (R. 968). There were two time clocks in the plant during nearly all of the period involved (R. 968—a third was later added) and there were normally about 200 employees or a little more punching through each time clock during the 14-minute period preceding the start of each shift (R. 1121, 1276; Ex. 97-99, R. 1378, reproduced at R. 1555-1567; R. 1168).

b. Time Required to Pass Time Clocks

The average rate at which employees can punch through a time clock is approximately twenty-five per minute. This was established by the testimony of Charles E. Doll, Sr.

(R. 1125), C. E. Doll, Jr. (R. 1228), and Pierce E. Wright (R. 1341). As a matter of arithmetic, it is clear that it would take a minimum of eight minutes to get the 200 employees through the time clock, if they went by in a steady stream. As a practical, everyday matter, more time was ordinarily consumed (R. 1120, 1125, 1014, 1168, 1399). Petitioner Metz said it would take three or four minutes for 50 or 60 persons to pass the time clock (R. 643). This would be not more than 20 persons per minute.

c. Time Consumed in Reaching Department

It would, therefore, be five or six minutes to starting time, at the earliest, before the employees could have passed the time clock. However, work could not start at five or six minutes to starting time, even if most of the employees had entered the plant at that time. Various circumstances would prevent this. In the first place a certain amount of time would be taken for the employees to reach their departments. Also, it must be remembered that in most departments the employees worked in groups and there was nothing to do until the last employee in the group had arrived.

d. Activities After Employees Arrived in Department

After punching the time clock, employees frequently stopped at the toilet rooms or at a drinking fountain, and engaged in various personal activities before starting work (R. 1416). Many of them spent the time visiting until the starting whistle blew (R. 1126-1127).

e. Time Not Worked During Day

It stands uncontradicted on the record that employees were permitted to stop production when they so desired at various times during the day. For example, they

sometimes mixed up soft drinks and quit work for a period of relaxation (R. 1175). Obviously, they were permitted much more freedom in this respect in a piecework plant than would be found in an hourly-rate plant. It is also uncontradicted (in fact, employees who were asked about it freely admitted) that on numerous occasions they would complete work before quitting time and then spend some time cleaning up, chatting with other employees, etc. until quitting time had arrived (R. 1129, 656, 728). An estimate as to the amount of time lost each day under these circumstances was made by Charles E. Doll, Sr., General Manager of the plant, who spends more than half his time in the shop (R. 1118). He stated that certain studies had been made and that his own observation indicated that employees take as "time out" between twenty-five and thirty minutes in the course of an ordinary work day (R. 1282).

f. Group Operations

Most of the employees worked in groups, and no member of the group could start work until all (or practically all) of the members of his group were on hand. The Special Master referred to this as "the most important circumstantial factor" (R. 183) supporting his conclusion that employees did not start work before starting time.

In the clay shop, where the ware is formed, some employees were employed in groups of three, and the others were employed on large machines operated by groups of 20 to 25 persons. In the former case, work could not start until all three operators were ready to begin, and in the latter case operations could not start until practically the full crew was on hand (R. 984, 985). This is described in the Master's Report (R. 184).

In the brushing and dipping department, most crews consisted of a brusher, dipper, and finisher, none of whom could work until the others arrived (R. 1169-70, 184, 526, 777). Some employees were engaged on large dipping machines, which could not be put in operation until practically the entire crew was present (R. 1186, 1167, 184).

In the glost belt department, the situation was even more striking. There, operations could not begin until nearly all the employees in this department and the adjoining chipping department—some 165 employees—were on hand (R. 1230-31, 441, 927, 184).

There is no evidence in the record that there was a full crew present before starting time on any day, as to any group, machine, or department. Yet it is clear that no member of any group could start work until the last member had come in, and this might be ten minutes or more after the first arrival.

5. WORKERS WHOSE JOBS DIDN'T PERMIT THE STARTING OF WORK BEFORE AN ESTABLISHED STARTING TIME SPENT THE SAME AMOUNT OF TIME IN THE PLANT BEFORE WORK AS DID OTHER EMPLOYEES

In some job classifications, employees worked around the clock in three eight-hour shifts. On these jobs, the employee coming in to work could not begin until his predecessor had quit. It was not possible for these employees to work over eight hours, and it was not claimed that these employees started work ahead of time. Yet these employees punched in as early as did the others.

One such group comprised the pressmen in the slip house (who mix the clay and other ingredients from which the ware is formed, R. 1087). It is uncontradicted on the record that it would be impossible for two crews to be working at the same time in the slip house (R. 1283,

1386). One crew is at work until its quitting time, when it is relieved by the other (R. 1283). Furthermore, since the three crews worked twenty-four hours a day and each of the crews was credited with eight hours worked, it appears a physical impossibility to conceive of the three crews (succeeding each other on the particular machines which they used) working an aggregate of more than twenty-four hours a day. Because of a particular situation (they were paid on a group piece-work basis, and the number of hours worked during each shift had no bearing on an individual's earnings—R. 1384, 1385) it could have made no difference in their earnings if they had started work a little early or a little late. There was no inducement to them to begin work before starting time. But as shown in detail on Exhibit 101 (R. 1385, reproduced at R. 1564) these employees usually punched in at the time clock from ten to fourteen minutes before starting time. The only explanation which can be given for the punch-ins of the pressmen is that it was convenient for them to allow this period of time to get over to their department and get started to work at the regular time.

A somewhat similar situation is observed in the case of the kiln firemen. These employees work on eight-hour shifts, which are maintained twenty-four hours a day and 365 days a year (R. 1092). Each shift is entirely in charge of the operation of the kilns from its regular starting time until its regular stopping time (R. 1093). It is impossible for two crews to be working at the same time (R. 1283). It would seem, therefore, to be physically impossible for the employees in this group to have worked more than twenty-four hours a day or more than eight hours on each shift. Furthermore, there could be no inducement to them to do so, because employees on this

job were paid on the basis of the number of cars of ware that pass through the kilns during a pay period, and the compensation of an employee did not depend on the number of cars which his crew put through the kilns during his eight-hour shift (R. 1379). Exhibits 100 and 100-A (R. 1382, reproduced at R. 1558), however, show that these employees likewise frequently found it convenient to punch in twelve minutes or more before starting time, so as to be ready to go to work at starting time.

The same observation could be made as to the boiler firemen. The Company's boiler room is in operation twenty-four hours a day and is cared for by firemen working in eight-hour shifts (R. 1389). One man succeeds another, tending the same boiler (R. 1102). Here, again, it would be impossible for two boiler firemen to be working at the same time (R. 1283). Furthermore, there was no inducement to them to start work before starting time because they were paid simply on a straight hourly rate (R. 1389), and there was obviously no personal advantage to be gained by attempting to start work a minute or two ahead of time. Nevertheless, as shown on Exhibit 102 (R. 1391, reproduced at R. 1556), the boiler firemen punched in the same period before starting time as did the individual piece workers. The situation in these three departments, we believe, indicates exactly what happened all through the plant. Various employees in the departments above described were represented in this action (Ex. 44, R. 791—Original physical exhibit transmitted to this Court). None of them, of course, was called as a witness—for the reason, we submit, that it could be readily demonstrated that it was impossible for them to work any longer hours than the records of the Company showed. And we submit the fact that the punch-in pattern is the same throughout the plant, as

well in cases where work could not possibly start before starting time as in cases where there was a possibility of this, indicates the truthfulness of the testimony of the respondent's witnesses who said that, in fact, work did not begin until the regular starting time or thereafter in any department. This is in accordance with the Master's finding (R. 191).

6. NO REQUIREMENT THAT EMPLOYEES PUNCH IN BEFORE STARTING TIME

It was conclusively established on the record that employees were not required to punch in fourteen minutes before starting time. In the first place, the time clock cards of the petitioners and other employees show that they did not regularly punch in at any such time. In the second place, it was impossible for more than about twenty-five employees to punch in that early on either clock for any shift. In the third place, petitioners' witnesses admitted they were not considered late if they got there by starting time (R. 485, 756).

7. THE COMPANY REDUCED WORKING HOURS AND INCREASED PERSONNEL

It is undisputed that the hours of work of the employees of the Mt. Clemens Pottery Company were reduced from forty-five hours per week in 1937 to forty-four in 1938, and then to forty-two in 1939 and finally in 1940 to forty hours per week, in accordance with the graduated schedule enacted by the Fair Labor Standards Act. The petitioners testified to this effect, and their testimony was supplemented by that of respondent's witnesses (R. 511, 658, 1279). The matter of compliance with the Wage and Hour law frequently was discussed at foremen's meetings which were held weekly, and the

foremen were repeatedly advised that they must schedule operations in their departments so as to permit the completion of their work within the statutory straight time maximum hours, except in cases where special circumstances required that employees work overtime (R. 1162, 987, 1008, 1405). There is also no question about the fact that ten or twenty individuals worked overtime and were paid at overtime rates therefor each week (R. 1163).

It also is clear that the reduction of hours made it necessary for the Company to put on additional employees (R. 1279, 1211). The enlargement of the personnel, however, did not neeessitate any substantial additions to the plant's capital equipment (R. 1217) although some minor pieces of equipment were acquired (R. 1279); and the reduction of the number of hours of work together with the hiring of new employees did not increase the Company's cost of production (R. 1217, 1280). If, in fact, the Company had been able to surmise that the claim now made would be advanced, it would have been simple for the Company to have added a few more employees and followed a system of charging each employee with having been at work from the even quarter hour preceding the time he entered the plant until the even quarter hour following the time he left the plant. This would not have increased the Company's cost of production (R. 1280) although it obviously would be a hardship on the employees, since it would decrease their earnings—the Company being obliged to limit them to forty hours a week (R. 1212). It is absurd to suggest, when all these things are considered, that the Company—in continuing to follow the meticulous record-keeping system it employed, despite knowledge that a more lax system was permissible under the law (R. 1112-1114)—was "gypping" employees.

III. Detailed Review of Evidence As to Time of Starting Work

We have summarized above the general nature of the proofs, explaining how the Company computed the working hours of the employees, giving the reasons for the adoption of this method, showing that it is in conformity with the uniform practice in industry, explaining in general how the employees spent their time after punching the time clock and before going to work, and stating the principal factors which must be considered in reviewing the claims of the petitioners that they worked longer than the Company's records showed.

Later in the brief, it will be necessary to consider in some detail the testimony of the employees, as a part of our argument that there is utterly no support even in their own testimony for the findings of the District Court.

But all of this leaves out any treatment of the testimony of the Company witnesses and the eloquent though mute testimony of indisputable physical facts, on the central issue as to when work started in each department, with reference to the starting time. Some twenty-three trial days were devoted to a detailed examination of this question. While we desire to avoid burdening this Court with a detailed reiteration of the testimony on these matters of fact; nevertheless, we believe that, since the central issue of the whole case is whether or not the Master committed clear error in finding that the plaintiffs did not start work before starting time, we should make available for the use of this Court some summary of all the evidence as to when work started in each of the four departments referred to in petitioners' testimony.

In so doing, we are constrained by considerations as to the length of the brief from reviewing the testimony in as much detail as we think would be helpful. It will be necessary for us to omit reference to many factors bearing on the credibility of witnesses and circumstantial indications as to the truth or untruth of petitioners' claims. These matters are set forth in considerable detail in the Master's report, which includes a very careful review of all the testimony, set forth in greater length than may be done here. Adopting the Master's review of the testimony on working time (R. 176-191) for a comprehensive statement, we wish in the following section to direct the Court's attention specifically to certain details that are particularly relevant in view of the determination of the District Court.

We think this can be accomplished with greatest economy of space by reviewing as to each of the four departments: (a) physical and mechanical factors affecting time when work began; (b) preliminary operations that might be performed before production started: (c) testimony as to the time when production started.

1. CLAY SHOP

a. Physical and Mechanical Factors Affecting Time When Work Began—Group Operations

The Clay Shop is located in a large room more than four hundred feet long (Ex. 30-A, R. 973, reproduced at R. 1524). Employees working in this department must travel a distance ranging between 400 and 800 feet from the time clock to reach their place of work (Ex. 65, R. 973, reproduced at R. 1536).

In this department, where ware is formed, employees work either on the so-called mangles or on the so-called machine jobs.

In case of mangles, a crew composed of three employees is engaged in making flat ware or oval ware. None of the three individuals could begin work until the entire crew was there (R. 984). This was freely admitted by the petitioners as well as by respondent's witnesses (R. 645, 728). In this connection, it is significant to observe that in instances where one member of a crew may have punched in twelve or fourteen minutes before starting time, other members of the crew may not have punched in until a minute or two before starting time (R. 678-680). In such cases, none of them could start work until after the starting time, as petitioners admitted (R. 648).

On the so-called machine jobs, some twenty to twenty-five persons were employed on a machine. Operations could not start until practically the full crew was there, and the machines never were put in operation until the established starting time for the department. In the case of employees working on the machines, there was no possibility of their having started before starting time, and it is significant that no witness made any such claim (R. 985).

There were approximately two hundred persons going through the time clock at the beginning of each shift in this department (R. 1276) and, therefore, eight or nine minutes would be the minimum amount of time necessarily consumed to get the full crew past the time clock.

b. Preliminary Activities

Employees would not show up in the department until six or seven minutes before starting time at the earliest, and many of them arrived after starting time. It was frequently ten minutes or more after starting time before all the employees were at work (R. 991, 994, 998, 1011, 1053, 1055, 1056).

After a clay shop employee reached his place of work, he sometimes (but not daily) spent a little time preparing himself for work. Some of the petitioners estimated that two or three minutes might be spent in preliminary activities of one sort or another (R. 174, 640, 727, 696). But it was clear that there was nothing to do that could not be accomplished in a few seconds.

Fitton, who worked as a jiggerman for a long time before becoming foreman (R. 991) testified that a jiggerman had no odd jobs to perform after arriving in the department except to bend his scrapper, which is a personal tool like a carpenter's saw or a bricklayer's trowel (R. 992), and this takes the jiggerman about a second (R 990). The water is brought to the crews by other employees, and the clay likewise is brought to them (R. 990). The time in the department before the starting of work was actually spent in visiting (R 1003). Witness Starner, a foreman, explained that he usually arrived at the plant about an hour before starting time to make sure that the clay was at the stations, that the electric dies were turned on, and that everything would be ready to begin work at starting time (R. 1010). While it is clear that employees spent varying periods of time in the department before starting production, it is equally clear that no employee made any showing that he reg-

alarly and before starting time did anything that would take more than a few seconds to perform, that could possibly be considered work.

As pointed out in the Master's report (R. 174, 201) petitioners did not establish that any of these preliminary activities, except perhaps such purely personal matters as putting on overalls or gloves, were performed before the regular starting time. On the contrary, there was much testimony that preliminary activities occurred after the regular starting time (Master's Report, R. 174, 191). This finding of the Master was not revised by the District Court.

c. Start of Production

Former Clay Shop employees who testified for petitioners were extremely vague in their statements as to when work started. Metz, on direct examination, said that he went to the department after punching in (R. 610). He was not asked what he did after arriving in his department. On cross-examination, he admitted he sometimes didn't start work until after starting time (R. 648). He said that it was sometimes as early as five minutes to 6:00 that production started; and that, on the other hand, it was after 6:00 on days when one of his crew didn't punch in until three or four minutes to 6:00 (R. 648). He admitted that he had no recollection as to when production work started on any particular day (R. 665, 678).

The testimony of Larimer, petitioners' other witness from this department, was uncertain and in several respects inconsistent (C.f., R. 726, 727, 728). The Master (who heard him testify) did not accept his statements.

On the other hand, Fitton, respondent's witness, was positive that employees did not start work before 6:00 (the regular starting time) and said that it was frequently fifteen or twenty minutes after 6:00 before they all started (R. 989). He explained that at 6:00 o'clock he would go around the department and never did he have the experience of finding most of the employees ready to work at that time. He said that it was very seldom that anyone would be ready to work by 6:00 (R. 993). While conceding that some employees might occasionally be seen fixing their scrappers at one or two minutes before 6:00 (R. 994), he said he never saw them even making this preparation as early as five minutes before 6:00 (R. 994). It was a very frequent occurrence to see the employees stop and visit on the way in (R. 1005).

Starner said that on the average, people would actually get started to work a little bit after 6:00 (R. 1011). He would always wait until after six o'clock before he would even think that someone was not coming (R. 1017). Employees were often five or ten minutes late (R. 1017). He did not permit employees to start work before 6:00 (R. 1018). He conceded that there may have been occasions when a particular crew, if they all got there early, might have started a minute or so before 6:00, but said that he never had seen any crew start as early as five minutes before 6:00 (R. 1024). It was possible that someone might start work a minute or two before 6:00, but not earlier than that (R. 1061).

The Master found that production did not regularly start until the scheduled starting time (R. 191). He further found that if on occasions particular employees started work very shortly prior to the established starting time it was counterbalanced by occasions when the em-

ployees started late and quit early (R. 191). This finding, resting upon the Master's determination as to the credibility of witnesses who testified before him in the course of a lengthy trial, was not reviewed by the District Court, nor did the District Court point to any error in this finding.

d. Conclusion as to Clay Shop

We submit it was established that clay shop employees started work at or after the regular starting time, and frequently quit early. At least, there is no contrary evidence in this record other than an admitted guess (R. 611, 727). Petitioners' witnesses (R. 648, 656, 728) admitted it was sometimes after six o'clock that they started. It is clear, also, on the record that in many cases when one individual in a group punched in early, another member of the same group would punch in later, and that work could not start until the entire group was there. There would be no means of determining even the maximum possible number of minutes that work could have started prior to starting time without analyzing the clock cards of each individual's entire group for each day. The testimony of the respondent's witnesses, which was in no way directly contradicted by the petitioners, was clear that it was generally a little after starting time before work actually started.

The petitioners did not undertake in any way to contradict the statement of respondent's witnesses that frequently employees quit work ten minutes before quitting time (R. 1025). In fact, they conceded that they often quit before quitting time (R. 669, 728).

2. DECORATING DEPARTMENT

a. Physical and Mechanical Factors Affecting Time When Work Began

In this one department (in which nearly all the employees were women) there was nothing which physically prevented an employee, if she in fact arrived in the department early, from commencing work before the regular starting time. However, there is no claim by any of the witnesses that any of the girls in this department did start work before the regular starting time.

b. Preliminary Activities

The only witness called by petitioners from this department did not refer to any preliminary operations that were required before she could start production. There were, in fact, very few. The "decal" girls would get their varnish, take ware to their benches, clean their brushes, and put on their aprons. This would take a few seconds (R. 1402). The liners would only have to pick up a bottle of liquid gold and soften their brushes (R. 1403). The girls would begin to come into the decorating department at about five minutes after 7:00 (R. 1399), and would come straggling in for the ensuing fifteen minutes, some employees coming in late every day (R. 1399). As the girls arrived they would congregate at various places within the department and spend their time talking and visiting until 7:15, the starting time (R. 1401, 1417).

c. Start of Production

The record is barren of any testimony by any of the petitioners as to the time when work started in the decorating department. The single witness called by petitioners as to this department, testified it took her a minute or two to get from the time clock to her bench, and that

ordinarily she went from the time clock to her bench (R. 846). She did not claim she started work when she got there. The testimony is uncontradicted that at 7:15 each morning the foreman, Mr. Trabue, would get up from his desk and make the rounds of the department and tell the girls that it was starting time (R. 1399-1400). Most of the girls waited for this announcement to begin preparing their brushes to go to work (R. 1403). Some of them would have their brushes ready and would have obtained their materials before 7:15, but in most instances they did not do this until after 7:15, the starting time in this department (R. 1403).

d. Conclusion as to Decorating Department

There is no testimony as to any employee in the decorating department having worked longer hours than shown by the records of the Company. On the other hand, we think the uncontradicted testimony of Trabue establishes beyond any doubt that he was correct in testifying (R. 1406) that the girls actually worked fewer hours than shown by the Company's computation of hours worked. No claim was made by employees in this department that they were instructed or required to punch a time clock or be on the premises at any time before starting time. Indeed, Miss Freddle said the Company's computation showed the hours she worked (R. 862).

3. BRUSHING AND DIPPING DEPARTMENT

a. Physical and Mechanical Factors Affecting Time When Work Began—Group Operations

In the brushing and dipping department, the glaze is applied to the ware. After the ware has been given its initial baking in the bisque kilns it comes to the brushing and dipping department. The first operation is that girls

brush dirt off the ware and it is then dipped either manually or mechanically in a solution of glaze; and after the dipping, excess glaze is sponged off by the spongers (R. 1094).

The manual operations are performed by groups of three persons—a brusher, a dipper and a sponger. The dipper cannot begin work in the morning until the brusher has arrived and brushed some ware (R. 1169-70). The sponger must wait until after the brusher has brushed some ware and the dipper has dipped it (R. 1169). Until the entire group is present neither the brusher nor the dipper nor the sponger can begin work. This was admitted by the petitioners (R. 777, 525).

Some of the dipping is done on the so-called automatic spray glazing machines. These have the appearance of a large circular drum some twenty feet or more in diameter (R. 1219). These machines cannot be put in operation until practically the entire crew is present and the employees can't do any work until the machine is started at the regular starting time, which is normally 7:00 o'clock (R. 1186, 1167).

We have a situation then where those employees working on the machines cannot ever begin work until 7:00 o'clock and employees working on the manual operations cannot start work until the entire group is present. As to the former, there is no claim of work starting ahead of time; and as to the latter, a finding that any employee started work before 7:00 could not be supported except by a finding that his entire group was present before 7:00 on that day.

As above pointed out, there is no proof that any one crew was assembled before starting time on any day. The indications are the other way (R. 579-583).

This department is located some distance away from the time clock "B" (See Ex. 30-A, R. 973, reproduced at R. 1524), which is used by employees in this department.

Approximately 200 employees customarily used time clock "B" during the period from 6:46 to 7:00 A.M. (R. 1168). Going through at the fastest possible rate, eight minutes would necessarily be consumed in getting the employees through the time clock. The testimony is that in actual practice it took nine or ten minutes for the employees to punch through (R. 1168). We have then a situation where it would necessarily be about four or five minutes to 7:00 before all the employees would even be past the time clock. If two minutes are allowed them to get to the department (R. 174) this would mean that it would be two or three minutes to 7:00 at the very earliest before the employees could reach their department. Of course, it cannot be assumed that employees would get in at top speed every day; and the evidence showed they did not.

b. Preliminary Activities

There was little for the employees to do in the way of preparing themselves for work. They spent some time, according to petitioners' witness Anderson, putting on their aprons or finger cots, or talking (R. 538). Mrs. Socia said that all she had to do was to put on her finger cots and get a brush and a stool (R. 740). We think it must be concluded that the few minutes the employee may have spent in the department before production started were consumed in purely personal activities.

The testimony of Harms, respondent's witness, is convincing that after they arrived in the department and before the regular starting time the men would grease their arms with vaseline and many of them would take

a chew of tobacco; and that most of the employees would put on finger cots, aprons and overalls (R. 1173) and that there was a great deal of talking in the department before starting time (R. 1180); and that the employees often spent time looking for their aprons (if they did not remember just where they left them the night before) and changing their shoes (R. 1181).

The brushers had no preliminary operations except to get their brushes. This might take a few seconds. The dippers did not have anything to do in connection with getting the tubs ready (R. 1178). The spongers had nothing to do except to get a pail of water; and they usually did this after 7:00 o'clock, while the brushers and dippers were getting started, since the spongers could not begin production until the brushers had brushed some ware and the dippers had dipped it (R. 1182).

c. Start of Production

The petitioners from this department offered very little information as to the time when production started. Anderson, for example, said that he could not tell just what he did on any particular day after punching the clock, and that he could do no more than give a guess (R. 550, 539). He said he wouldn't know as to any day when he first started dipping operations (R. 539); and his recollection as to how much time he may have spent walking into the department, and talking with other employees, was extremely vague and inaccurate (R. 534, 539). Finally, he admitted he couldn't tell by looking at the clock card when an employee went to work (R. 533).

Mrs. Socia was likewise vague and most evasive in her estimates as to how much time she may have spent (between punching in and starting work) while walking to her department, talking with other employees, chat-

ting at the locker where the women kept their brushes, looking up her own favorite chair or stool, or putting tape on her fingers (R. 769-775). She could only guess how long it took (R. 775).

Harms, respondent's witness, who had worked along with Anderson as a journeyman dipper for many years (R. 1166, 1187), said that once in a while someone might have a piece or two dipped before the whistle blew, but this was not often; and that it would be his observation that employees did not begin work until the regular starting time (R. 1173). He said that during the period of nine or ten years when he was working as a dipper he was usually the first one to reach the department in the morning and the first one to leave at night. He often punched in at fourteen or thirteen minutes before starting time, but he never started work before starting time (R. 1184).

The brushers would usually visit in the department until starting time and would start work then, except that if the trucker had not brought in their ware they would wait until some had reached them (R. 1181). The dippers started after the brushers (R. 1170). The spongers would wait until the brushers and dippers had got started to work and then they would get their water so as to be ready to start work soon after starting time (R. 1182).

The testimony of Anderson and Mrs. Socia really goes no further than to the point that they punched in each day at the time indicated on the clock card and that they then started to walk toward their department. The Master accepted the testimony of the Company's witnesses that no actual work was done during the period of two or three minutes before starting time during which there was a possibility of some work being done by the hand-operation workers, if their whole crew was there early.

Many detailed instances could be cited to demonstrate the lack of credibility of witnesses Anderson and Socia, who testified on behalf of petitioners as to this department. These two witnesses were among those singled out in the report of the Special Master (R. 180-181), in connection with his discussion of the indefinite and inconsistent nature of the testimony offered on behalf of petitioners. We submit that the determination of the Master as to the credibility of these witnesses must be accepted.

d. Conclusions as to Brushing and Dipping Department

The employees in this department did not make any particular attempt to fix the time when work started. There is no showing that they started work before starting time. On the contrary, it appears that it was physically impossible for employees working on machines to start work before the machines were started at 7:00; or for other employees to start before their crew was assembled, which was usually 7:00 or after. There is certainly no testimony whatever to support any finding that work started at any particular time before 7:00 o'clock and we think the conclusion must be that the employees did not begin work before 7:00, and that they frequently quit early, and that they unquestionably took considerable time off during the day. These, of course, were the conclusions of the Master.

4. GLOST BELT

a. Physical and Mechanical Factors Affecting the Time When Work Began—Group Operations

The glost belt is a large conveyor system. After the ware has been dipped into liquid glaze in the dipping department it is placed on benches in the glost belt system. Girls in the loading stations remove the ware from

the benches and place it in earthen ware containers or saggers of varying shapes and sizes, the typical proportions being approximately 15 x 18 inches in width and breadth and 15 inches deep. The saggers move from the stations on gravity rollers to a moving conveyor belt. When they reach a point toward the kilns, as marked on Exhibit 30-A (R. 973, reproduced at R. 1524), the saggers are removed from the belt by a group of men, and loaded on cars approximately 5 x 7 feet in size. These cars are then moved through the glost kilns by mechanical means. After the firing has been completed the cars emerge from the kilns (about 48 hours after their entry). At this point the glost unloaders and emptiers remove the ware from the saggers and place the empty saggers back on the moving conveyor belt where they are carried along to the stations at which the girls fill the saggers, and at that point other men deflect the saggers from the moving belt to the stations where the girls load them (R. 1095, et seq., R. 1222, et seq.).

Obviously, work could not start in this department until the belt was started; and the testimony as to the time when the glost belt was started in the morning must therefore be examined. As to this, petitioners' witnesses contradicted each other, and the testimony of each was impeached.

Trombley, who testified at length, did not specify when the belt started. He said first that he guessed he usually started work at five or six minutes to 7:00 (R. 458). This was disproved. At another point Trombley stated that the department started at 7:00 (R. 484).

On the other hand, Dacko stated that the belt often started at ten minutes or twelve minutes to 7:00 (R. 904); and Pearl said that he always saw Charles Doll,

Jr., assistant general manager, start the belt at fourteen minutes to 7:00 (R. 1482-84). But it is obvious that the belt couldn't be started for production purposes at twelve or fourteen minutes to 7:00, because nobody would be there. For this reason, as well as for the reason that Pearl was entirely discredited, we think his testimony must be disregarded.

Doll, Jr., and the glost belt foreman denied that Doll, Jr., ordinarily started the belt or that it was started before 7:00 (R. 1228, 1233, 1302, 1472), and Anderson, a petitioner, said he never saw Mr. Doll, Jr., start the belt (R. 1473). Therefore, little importance can be attached to the testimony of Messrs. Pearl and Dacko.

We submit that, considering the contradictory statements of petitioners' witnesses and considering their demonstrated lack of credibility, the testimony of respondent's witnesses should be accepted that the belt was not started for production purposes nor did production start before the regular starting time, which was ordinarily 7:00 A. M. (R. 1472, 1233). Stief, employed in a supervisory capacity, testified without contradiction that he had nothing to do in connection with the glost belt before 7:00 (R. 1311).

The Master did not make a specific finding on the point as to when the belt started (R. 185), but did find that in this department, as in the other departments, production did not regularly start until the regular starting time (R. 191), and pointed out that in this department there were no preliminary activities for the employees to perform (R. 170).

The Master also relied on the fact (R. 184) that rather than the time of starting the belt (which may have been occasionally put into motion before starting time for test purposes to see whether it was in proper working order), it was the time when a full crew was assembled that determined the time when work could start. Work could not start until nearly all of the crew was on hand. This was admitted both by Trombley (R. 441) and by Dacko (R. 927). Further, the glost belt department was operated in conjunction with the chipping department, and neither department could commence operations before the other, or until nearly a full crew was on hand in each department (R. 1231). There is no claim that the chippers were ready to work before 7:00.

Employees on the glost belt and in the chipping room used time clock B, along with the dipping room employees, the maintenance employees and the packing department employees, as has been above described, with the result that at the period from 6:46 to 7:00 there were usually somewhat more than 200 employees punching through this time clock during this particular 14-minute period. They could not even get through the time clock until about four or five minutes to 7:00 at the very earliest. Allowing one or two minutes to walk to the department (R. 452, 905), it is clear that here again the inquiry is limited to the question as to whether or not work started at some time during a period of about two or three minutes prior to 7:00, which is the earliest that it would be physically possible for work to commence, assuming that every employee was on hand early, and that no time at all was lost in getting all the employees into the department.

b. Preliminary Activities

There were no preliminary operations in this department except purely personal activities such as putting on gloves or overalls (R. 170). None of the petitioners claimed that they did any work before production started. The situation was described in some detail by respondent's witness Stief, who said that in cases where employees arrived in the department before 7:00 the older workers would generally go to their stations and sit down to rest until 7:00, or occasionally gather in groups and talk. The younger men would generally go to where there was a group of girls and talk to them until starting time (R. 1303). Doll, Jr., also described this situation, saying the girls loved to talk and were slow about starting work (R. 1223). This was specifically mentioned by the Master as convincing circumstantial evidence that no work was done before the starting time by employees in this department (R. 185).

c. Start of Production

Petitioners' witnesses offered but little testimony as to when work started. There is no proof that it started before the regular starting time. The principal witness for petitioners as to the glost belt, Earl Trombley, stated on direct examination (R. 426) that he could not say whether or not the time clock cards represented the time worked. Then he stated that he punched in at fourteen minutes to 7:00 and went directly to work (R. 426). He later admitted (as his time clock cards demonstrated) that he did not ordinarily punch in so early. On cross-examination, he conceded (R. 453) that other employees might not be ready for work when he arrived in the department, and that he couldn't start work until they all

got there (R. 453, 455). He further admitted that he did not know what time the employees would be ready for work (R 456). He admitted that he couldn't say just when he started work on any day (R. 480, 516). He never timed himself (R. 458). Finally, he said that the department started at 7:00 (R. 484) and that he was not considered late if in the department by 7:00 (R. 180).

Dacko said that it took about a minute or two to go from the time clock to his department, but he did not say when he started work (R. 905) nor did he say he started work immediately on arrival in his department (R. 180). On cross-examination he admitted that he couldn't undertake to fix the time that production started on any day (R. 950) and his recollection as to just what he did after punching the time clock and before starting work was most vague and uncertain (R. 948).

Always bearing in mind the admitted circumstance that production could not begin until nearly the entire crew was there, and bearing in mind the evasiveness of the petitioners on cross-examination, we think there can be no doubt but that the truth was stated by Stief, who said that production work did not start before the regular starting time which was usually 7:00 (R. 1302). This was the finding of the Master (R. 191).

All three of the petitioners' witnesses from this department were shown to have testified falsely. Trombley's testimony originally was that after punching out he would come back to clean up the department (R. 432), but he was forced on cross-examination to admit that he finished the clean-up before punching out (R. 467, 488, 495, 508). The Master referred to the unreliability of his testimony (R. 180). Dacko's testimony as to the language on a certain sign (R. 959) was demonstrated to be

incorrect (See Master's Report, R. 152). Pearl completely destroyed the value of his testimony by stating (R. 1485) that on many occasions in 1939 and 1940 and 1941 his time clock card would be punched out at 3:29 and punched in again at 3:31, and that a half hour was deducted in figuring his time. He was forced to admit on examination of the time clock cards that this had not occurred (R. 1487, 1489). The Master's Report referred to the unreliability of his testimony (R. 182-183).

d. Conclusion as to the Ghost Belt

It is clear that employees in this department could not begin work until the belt was turned on. There were no preliminary operations. It is equally clear that the belt could not be turned on for production until practically a full crew was on hand. There is certainly no showing that work ever started early, or that there were ever enough employees there before 7:00 to permit the beginning of work before starting time.

The Master found (R. 191) that production did not begin before starting time, and pointed out that there were no preliminary operations to be performed before production started (R. 170).

F. ARGUMENT

I. Synopsis of Respondent's Contentions

In the application for certiorari, petitioners suggest two bases for recovery. Their first proposition is that the judgment of the District Court should be reinstated. The second is that they should be granted a more substantial recovery than that permitted by the District Court, i.e., that there should be counted as hours of work all time spent in the plant, as indicated by time clock records. The District Court had disallowed this claim of the petitioners (who were plaintiffs in the District Court) and they did not appeal this adverse holding to the Circuit Court of Appeals. For this reason, we submit, the judgment of the District Court has become *res judicata* as to the issues decided against petitioners, and they cannot now attack the judgment of the District Court with a view to enlarging their rights thereunder. Therefore, we submit that the only issue which this Court should consider is whether the judgment of the Circuit Court of Appeals may be reversed, and the judgment of the District Court reinstated.

Summarizing the arguments developed in the following pages with respect to these claims of the petitioners, we begin with the proposition that the findings of fact by the Special Master were not shown to be in any respect clearly erroneous and were, therefore, under Civil Procedure Rule 53 (e) (2), binding on the District Court. The Circuit Court of Appeals so held.

The first branch of respondent's argument, then, is that petitioners' claims must be dismissed because under these findings it is clear that production work did not start

before starting time and there is no proof as to the amount of time consumed in preliminary activities or as to how much of the time so spent, if any, came before starting time. Even if such preliminary activities should be included in computing working time (which we deny), it would not affect the result.

Only if it can be said that as a matter of law employees must be paid for all time spent in the plant, as indicated by the time clock records, could any recovery be sustained. This brings us to the second main division of respondent's argument. We protest that this issue is not properly before the Court. We deny that there is any basis under the law for requiring employees to be paid for all time spent in the employer's plant, and assert that whether petitioners were at work at all times subsequent to punching the time clocks is a question of fact. We point out that both the Master and District Court decided this factual question contrary to petitioners' claim. The decision below on this factual question (on which both lower courts agreed with the Master) is, we argue, correct, being entirely in accord with prior decisions of this Court and the lower federal courts; and being supported by administrative rulings and interpretations, as well as by the testimony of the witnesses for both parties.

The third main proposition for which we argue is that the Circuit Court of Appeals properly held the judgment of the District Court to be erroneous, not only because (as above noted) it improperly disregarded the Master's findings, but for the further reason that such judgment was based wholly on surmise, speculation, and conjecture. In this connection we point out that the formula on which the District Court based its judgment was not supported by any evidence (but was, rather, inconsistent with

uncontradicted testimony), was arbitrary and unreasonable, and was based on a misunderstanding of the record and on certain assumptions which were in fact and law unjustified.

Our fourth and last main proposition is that the judgment of the Circuit Court of Appeals could properly be affirmed on the basis that the District Court erred in refusing to allow as an off-set against petitioners' claims, sums which had been paid them voluntarily by respondent as extra compensation.

II. The Master's Findings Control as to the Factual Issues and Under These Findings the Complaint Must Be Dismissed

1. THE LEGAL EFFECT OF THE MASTER'S FINDINGS

Rule 53 (e) (2), Federal Rules of Civil Procedure, provides in part: "In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous."

The Circuit Court of Appeals determined that there was no clear error shown in any of the Master's findings but that, on the contrary, they were supported by substantial evidence. We think there can be no question but that this determination of the Circuit Court of Appeals is clearly correct. Not only is it true that the Master's findings are supported by the overwhelming preponderance of the evidence but, in fact, as we point out *infra*, there is no evidence to support any contrary finding. The scholarly and comprehensive review of the testimony which appears in the Special Master's report abundantly demonstrates how fully these findings of fact of the Master are supported by unimpeached testimony and by much circumstantial evidence.

Indeed, the District Court did not find that there was any clear error in the Master's findings of fact. The District Court did not review the Master's report in the light of this rule, and did not consider the issue as to whether there was any showing that the Master's findings were clearly erroneous. Rather, the theory of the District Court seemed to be that if any testimony could be found to support a conclusion that petitioners started work ahead of the starting time, then the Court could disregard the Master's findings of fact and make some award in favor of the petitioners. See, e.g., R. 1500, 1506. The Court suggested at one point (p. 36, Tr. of April 12, 1943—omitted from printed record and referred to per stipulation, R. 1582) that it might call five or six other employees and interrogate them under oath in order to determine whether or not the Court would sustain exceptions to the Master's report. Surely, this misconceives the function of the District Court in reviewing a case which has been referred to a Master for a finding of facts. The findings of the District Court, then, were not based on its determination that the Master's findings were clearly erroneous.

Rather, the conclusion of the District Court was based on an independent finding which was in fact erroneous and on an assumption which was entirely unjustified. The finding to which we refer (R. 242) was to the effect that most of the employees were in the plant by eight or nine minutes before starting time. As we point out *infra*, this finding was unsupported by the testimony and was based on the Court's misunderstanding of three exhibits. The assumption to which we refer is the District Court's assertion (R. 242, 243) that if the employees were in the plant ahead of time, they must have started work ahead of starting time. This was clearly contrary to the abund-

antly supported finding of the Master (based on the actual testimony) that although many of the employees may have been in the plant somewhat before starting time, yet they did not in fact start work prior to the starting time.

We submit that the Circuit Court of Appeals correctly held that the findings of fact by the Master were supported by substantial evidence, were not shown in any respect to be clearly erroneous, and were binding on the District Court.

While Rule 53 (e) (2) does not appear to have been frequently before this Court, there are many decisions of the Circuit Courts of Appeals, and they are in agreement as to the proper construction and effect of this rule.

In *Santa Cruz Oil Corp. v. Allbright-Nell Co.* (C.C.A. 7, 1940), 115 F. (2d) 604, 607, the Court said that this rule "binds the District Court to accept findings of a Master just as Rule 52 (a) binds this court to accept findings of a District Court," and stated the rule to be that "so far as there is any testimony consistent with the finding, it must be treated as unassailable." In that case the District Court had reversed the findings of a Special Master, and on review the Circuit Court of Appeals concluded that the findings of the Master were supported by the testimony, and that therefore the District Court erred in sustaining exceptions thereto.

In such a case as this the question before the Appellate Court is the same as the question before the District Court. The findings of the Master are to be accepted (disregarding the Trial Court's refusal to accept them) unless it is apparent to the Appellate Court that the Master was clearly in error. *Michelsen v. Penney* (C.C.A. 2, 1943), 135 F. (2d) 409. As declared in *Morris Plan In-*

dustrial Bank v. Henderson (C.C.A. 2d, 1942), 131 F. (2d) 975, 976 (with reference to Bankruptcy General Order 47, which employs the same language as Rule 53 (e) (2)):

> "It is true that logically a distinction can be drawn between holding a referee's finding to be 'clearly erroneous' and holding a judge's finding that a referee's finding is 'clearly erroneous' to be 'clearly erroneous.' • • • We should regret, however, to be compelled now to introduce such refinements into the solution of what is after all only a practical problem. • • • We therefore hold that the question is the same in this court as it was in the District Court."

In accordance with these principles, the Circuit Court of Appeals in the instant case reviewed the evidence and determined that the District Court had erred in failing to accept the Master's findings. The decision was in accordance with well established doctrines, which have been uniformly followed by the Circuit Courts of Appeals under the Federal Rules of Civil Procedure. In *National Labor Relations Board v. Remington Rand, Inc.* (C.C.A. 2, 1942), 130 F. (2d) 919, 930, the Court (applying by analogy the provisions of Rule 53 (e) (2) in a case where a Master had been appointed by the Circuit Court of Appeals) ruled that where there was contradictory testimony, the finding of the Master should be accepted, since the Master had the right to accept the testimony of a witness, and since, where the Master did accept the testimony and made findings of fact accordingly, the Court could not say that such findings were clearly erroneous. Similarly, in *In Re Connecticut Company* (C.C.A. 2, 1939), 107 F. (2d) 734, it was ruled that the Trial Court was in error in refusing to affirm the Master's report where there was testimony to

support it. In *Arrow Distilleries v. Arrow Distilleries* (C.C.A. 7, 1941), 117 F. (2d) 636, it was held that the District Court had erred in rejecting the Master's findings which were supported by substantial evidence.

These principles have been applied in other cases involving employee actions under the Fair Labor Standards Act, with results identical to those reached herein by the Circuit Court of Appeals. In *Bracey v. Luray* (D.C. Md., 1944) (not officially reported), 7 W. H. Rep. 760, 8 Lab. Cas., par. 62,289, the Court declared:

> "The Special Master was in the best position to appraise the credibility of the probative value to be given to the testimony of each and every witness appearing before him. • • • We find, however, that there was substantial evidence to support the Special Master's conclusion in each instance and, therefore, deem it unnecessary to review in any detail his findings of fact and conclusions with respect thereto, except with respect to one point [of law]."

Similarly, in *In Re Interstate Magazine Hauling Corp.*, (D. C. N.Y. 1943), 55 F. Supp. 880, 881, in affirming the referee's order, the Court said:

> "It is apparent from the referee's decision and from his findings of fact that he was convinced that claimant had • • • failed to produce any definite evidence to support or sustain his claim for the alleged overtime. After all, this was a question of fact. I cannot say that in coming to this conclusion the referee was clearly erroneous. The referee was better qualified to pass on the credibility of the witnesses and the value to be attached to their testimony than the reviewing judge. • • •"

While the Federal Rules of Civil Procedure apparently require that more weight must be given to the Master's findings than was true under the provisions of the old Equity Rule 61½ (3 Moore "Federal Practice," 3144), yet the result reached here was in accordance with principles that long antedated the Federal Rules of Civil Procedure (1938). As early as 1895, this Court declared, in *Davis v. Schwartz*, 155 U. S. 631, 637, with respect to a case that had been referred to a Master by consent to find the facts (as was the case here, R. 140), "as there is nothing to show that the findings of fact were unsupported by evidence, we think they must be treated as conclusive." And see *Kowalsky v. American Employers Insurance Company* (C.C.A. 6, 1937) 90 F. (2d) 476; *Roberts v. Southern Surety Company* (C.C.A. 4, 1929), 33 F. (2d) 501.

2. UNDER THE FINDINGS OF FACT BY THE MASTER THE ACTION MUST BE DISMISSED

We have reviewed *supra* (p. 15) in some detail the findings of fact made by the Special Master. There can be no question but that if these findings be taken as the facts of the case, the action must be dismissed. The Master found that production did not start until starting time; that on each day there were many employees who started production after starting time and many who quit work early; that if there were particular occasions when an individual employee started production as much as a minute or possibly two minutes before starting time, any such instances were more than counterbalanced by occasions when such employee would start late and quit early.

Clearly, under these findings, the determination of the District Court, to the effect that an employee would be

presumed to have started production work seven minutes after punching the time clock in the morning and five minutes after punching the time clock in the afternoon, cannot be sustained.

Moreover, the Master made other findings (many of them specifically approved—R. 241-244—and all of them generally adopted by the District Court—R. 272) which dispose of the contention that there were certain preliminary activities of the employees that should be deemed working time and which should be paid for. The Master found, as pointed out more fully *supra*, that it could not be determined upon the proofs as submitted, how much time was spent in these preparatory activities (such as putting on overalls or gloves, adjusting stools, picking up tools, rubbing vaseline on one's arms, etc.) or how much of the time so spent occurred before the regular starting time. On any particular day there would be some employees engaging in these activities before starting time and others doing this after starting time. For any particular employee, the situation would vary from day to day.

All of these findings are not challenged nor on this record can they be.

Therefore, the question as to whether or not any of these activities comprised "work" within the meaning of the statute, and whether the time so spent should be included as "working time" need not be reached because even if it should be held that any part of such activities constituted work, still no judgment could be entered on the basis of such a determination because of the utter impossibility of determining how much time might have been spent by any particular employee in such activities, and whether the time so spent was before or after start-

ing time, and whether, if before starting time, it was compensated for by other occasions during the week when the employee started late or quit early.

III. Judgment Cannot Properly Be Rendered for Petitioners on the Grounds that They Must Be Paid for All Time Spent Within the Plant as Indicated by the Time Clock Cards

1. THIS CLAIM CANNOT BE HERE ASSERTED

This contention of the petitioners received short shrift in the District Court. The Master ruled that on the basis of the particular facts here involved working time did not begin when the employee punched the time clock (R. 199); the District Court specifically confirmed this finding of fact (R. 244). On this point, the judgment of the District Court was adverse to the petitioners. Petitioners did not, however, file any appeal or cross-appeal to the Circuit Court of Appeals. Accordingly, the judgment of the District Court on this point became *res judicata*, and the petitioners could not attack the District Court's judgment in the Circuit Court of Appeals, with a view to enlarging their own rights thereunder.

Peoria & Pekin Union Railway Co. v. United States, et al., 263 U.S. 528, 536 (1923);

Alexander, Collector v. Cosden Pipe Line Co., 290 U.S. 484, 487 (1933);

Helvering, Commissioner v. Pfeiffer, 302 U.S. 247, 250 (1937);

Morley Construction Company v. Maryland Casualty Co., 300 U.S. 185, 191 (1937);

LeTulle v. Scofield, Collector, 308 U.S. 415, 421 (1940); and other cases there cited.

Many decisions of the lower Federal courts to this same effect are collected in 10 Cyc. of Federal Procedure (2d Ed. 1943), pp. 68, 498.

This question, then, as to paying employees from the moment they punched the time clock, was not presented to the Circuit Court of Appeals. The issue not having been before the Circuit Court of Appeals, it cannot be raised here.

Husty v. United States, 282 U.S. 694, 702 (1931);

Virtue v. Creamery Package Manufacturing Company, 227 U.S. 8, 38 (1913);

Edward Hines Yellow Pine Trustees v. Martin, et al., 268 U.S. 458, 465 (1925);

Hiawassee River Power Co. v. Carolina-Tennessee Power Co., 252 U.S. 341, 344 (1920);

Illinois Central Railroad Co. v. Mulberry Hill Coal Co., 238 U.S. 275, 281 (1915).

Other cases on this point are collected in 12 Cyc. of Federal Procedure (2d Ed., 1943), p. 344.

Many sound practical reasons support the rule so established by a long line of precedents. A contrary rule would impose unfair burdens, both on this Court and on the several Circuit Courts of Appeal. A contrary rule, permitting questions to be raised for the first time in this Court, would require this Court unnecessarily to assume a heavy burden (which under the law is divided among the several Circuit Courts) of examining complex factual details of many voluminous records. Such a rule would put the Circuit Courts of Appeal in the unenviable position of being compelled to render judgments without

consideration of points (not considered because not raised) which might be determinative of the case. Any rule which permitted litigants to raise for the first time in this Court a point decided adversely to them in the District Court and not presented to the Circuit Court of Appeals, would unsettle the finality of judgments of the lower courts, would be productive of much confusion, would encourage the taking of appeals piecemeal, and would increase unnecessarily the burdens of the Supreme Court.

2. WHETHER EMPLOYEES WERE AT WORK AT ALL TIMES SUBSEQUENT TO PUNCHING TIME CLOCK IS A QUESTION OF FACT

It is obvious that whether or not an employee is "at work" immediately upon punching the time clock depends on what activities he engages in after punching the clock. In some plants, employees punch in as much as a half hour early and spend the time reading a newspaper or playing cards while waiting for work to start (R. 1243). Conceivably—although there is no proof of this in the record—employees in some plants might be required to begin oiling machinery or sweeping floors, or to perform some other task, immediately after punching the time clock. In any case, determination as to whether an employee's time after punching the clock is spent at work or otherwise, must depend upon an appraisal of the facts of the particular situation.

In other words, determination of precisely what time is included within the phraseology "hours worked" and "workweek" is primarily a question of fact. That this is true has been recognized in several decisions of this Court. In *Armour & Co. v. Wantock, et al.*, 323 U.S. 126 (1944) it appeared that the lower courts, in deciding

whether or not time on duty by company fire guards was compensable as time worked, had "weighed the evidence in the particular case in the light of the Administrator's ruling and reached a result consistent therewith" (this language being taken from the opinion of the Court in *Skidmore, et al., v. Swift & Co.*, 323 U.S. 134, 140). The factual finding that under the circumstances there involved time spent on duty constituted working time was upheld. In a companion case, *Skidmore, et al., v. Swift & Co.*, 323 U.S. 134 (1944), the lower court held that as a matter of law, time spent by guards in such activities could not constitute hours worked. The Supreme Court observed that it was error to determine the issue as one of law and, in remanding the case for further proceedings, said, p. 136:

> "We have not attempted to, and we cannot, lay down a legal formula to resolve cases so varied in their facts as are the many situations in which employment involves waiting time. Whether in a concrete case such time falls within or without the Act is a question of fact to be resolved by appropriate findings of the trial court. *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 572. This involves scrutiny and construction of the agreements between the particular parties, appraisal of their practical construction of the working agreement by conduct; consideration of the nature of the service, and its relation to the waiting time, and all of the surrounding circumstances."

The decision of the Fifth Circuit Court of Appeals in *Tennessee Coal, Iron & Railroad Company, et al., v. Muscoda Local 123, et al.*, (C.C.A. 5, 1943), 135 F. (2d) 320 (subsequently affirmed by this Court, 321 U.S. 590), was placed squarely on the proposition that the determination as to whether the working time of the miners

began when they entered the mines' portals, was a question of fact. This is referred to in the original opinion of the Court, 135 F. (2d) 320, 322, and is emphasized in the opinion handed down on the motion for re-hearing, 137 F. (2d) 176, 183, where the Court ruled that the question before it on appeal was whether or not the findings of fact by the District Court were clearly erroneous; and the Court emphasized that its opinion should not be interpreted as providing a rigid definition of working time or as upholding the "portal-to-portal" theory as a matter of law. When this case reached the Supreme Court it was pointed out (321 U.S. 590, 593) that the decision of the Circuit Court of Appeals was based on the proposition that the District Court's findings were supported by substantial evidence. This Court agreed, and declared (321 U.S. 590, 598):

> "Viewing the facts of this case as found by both courts below in the light of the foregoing considerations, we are unwilling to conclude that the underground travel in petitioners' iron ore mines cannot be construed as work or employment within the meaning of the Act."

The concurring opinions of Mr. Justice Frankfurter and Mr. Justice Jackson particularly emphasized that the question was one of fact.

In the instant case, the question as to when working time began was treated as a question of fact (R. 399). Both the Special Master and the District Court found as a fact that work did not begin the moment employees punched the time clock. The Circuit Court of Appeals was not asked to review this finding but its opinion suggests its approval of this factual determination made below. We have here then concurrent findings that in

the particular situation here involved, employees did not begin work the moment they punched the time clock, and that the workweek may not be computed on such a basis.

3. THE DECISION OF THE CIRCUIT COURT OF APPEALS IS NOT IN ANY WAY IN CONFLICT WITH THE RULE OF THE "PORTAL-TO-PORTAL" CASES

Petitioners insist that support for their position is to be found in the decisions of this Court in *Tennessee Coal Company, et al., v. Muscoda Local,* 321 U.S. 590, and in *Jewell Ridge Coal Corporation v. Local No. 6167, et al.,* 325 U.S. 161 (1945). This argument is easily answered. Examination of the facts of these two cases shows that rather than upholding petitioners' argument they support the proposition that the mere presence of the employee on the employer's premises does not mean that he is at work.

As appears from the files and records of *Tennessee Coal Company v. Muscoda Local,* one of the claims of the employees in that case was that they should be paid "for the aggregate of time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out" (40 F. Supp. 4, 8 and 9). Examination of the record and briefs filed in that case discloses in more detail the precise nature of the claims so made.

The miners spent from thirty to forty-five minutes on the employer's premises before entering the portal of the mine. The employees, after reaching the company's property, usually went first to the bathhouse, where they changed to their work clothes, leaving their street clothes in lockers or hangers provided for this purpose. (It was the original position of some of the employees in that case that "the work day began and ended at the bath-

house, but this claim was abandoned.) After changing their clothes in the bathhouse, the employees went to a small house at or near the tipple of the mine where they purchased at cost carbide for use in their lamps (Circuit Court of Appeal Record in *Tennessee Coal & Iron* case, Vol. 2, pp. 779-80, 1085, 1156-7). The employees, after securing carbide, if any was needed that particular day, next deposited their checks at the tipple office. This mine check was a metal disc bearing a number. The check when deposited was hung on a hook on a board which represented the various working places. Much of the testimony of the employees in that case was devoted to the claim that they had to spend some ten minutes to a half hour on the surface collecting tools, receiving orders and performing the incidental duties necessary to enable them to do their work in the mines.

The District Court held that the aggregate of the time so spent on the surface in obtaining and returning lamps, carbide and tools and in checking in and out, constituted working time.

The Circuit Court of Appeals, however, reversed the determination of the District Court on this point and held:

> "With respect to time spent by employees checking in and out and procuring and returning tools, lamps, and carbide, the case stands differently. It appears that the workers were obliged to furnish their own tools, lamps, and carbide, and were free to exercise their own judgment as to when, where, and how they should procure their equipment. The company merely instructed them as to the equipment needed, and did not attempt further to regulate the matter. The checking system used by appellants required the employees only to deposit a metal disc at the tally house when arriving for

> work, and to pick it up again at the end of the shift. In addition to the practical difficulties incident to the computation of isolated moments so elusive in character, we think these pursuits should not be computed as work-time; since they fall within the category of duties incident to qualifying the employee to perform his work rather than within the scope of his actual employment." 135 F. (2d) 320, 323.

Again in its decision on the application for re-hearing, 137 F. (2d) 176, 180, the Court reiterated its holding that no part of the time spent in going to and from the bathhouse, or in the batlihouse, or in going to and from the portal was working time, but that the employment began at the time the employees were required to report, and did report, at the portal, and ended upon their return thereto; and that if employees were not required to report at the portal at any particular time, then the hours of work would begin at the actual time of departure on the trip underground.

At the Tennessee iron mine, then, the company required the employees to report at the portal at a specified time. The only comparable requirement of the Mt. Clemens Pottery Company was that the employee should punch the time clock by starting time. If an employee arrived at the Pottery plant earlier and punched the time clock earlier, this was a matter of his own convenience, just as if a mine employee arrived at the portal before the time he was required to be there. The mine employees were not allowed compensation for the few minutes that they might have spent at the portal if they arrived there before the required time. Nor did they in this Court make any claim for such time. Furthermore, the holding of the Circuit Court of Appeals (not reviewed by this Court)

was that no compensation should be allowed the miners for time spent at the surface and before reporting at the portal (or after leaving the portal at the close of work) as above described.

Therefore, the decision of the Circuit Court of Appeals in the *Tennessee Coal & Iron* case requires the dismissal of petitioners' claims herein. This was recognized and pointed out by the District Court herein in its opinion (R. 244). Subsequently, the District Court was asked by petitioners to amend its findings and require pay for all time spent on the premises (R. 293). But the Court ruled that the "portal-to-portal" cases could not be so construed (R. 1513). Similarly, the Circuit Court of Appeals, in its opinion herein, pointed out that its opinion was in accordance with the decision in the *Tennessee Coal & Iron* case (R. 1596, 1597).

The situation was quite similar in *Jewell Ridge Coal Corporation v. Local No. 6167, et al.*, 325 U. S. 161 (1945). There, again, the claim originally made on behalf of the employees was that the workweek included all the time spent in obtaining lamps, tools, or equipment, and other preparatory activities, as well as the travel time which commenced after they entered the portal of the mine (53 F. Supp. 935, 946).[2]

[2] It is interesting to note that in the *Jewell Ridge Coal* case, which was tried in 1943, the employees by their pleadings disclaimed any additional compensation for the period from October, 1938 (the effective date of the law) to April 1, 1943 (the date of the expiration of a contract). The Circuit Court of Appeals emphasized the fact that this waiver had been made (145 F. (2d) 10, 13).

It appeared in the coal mine case, as in the iron ore case, that the miners spent a certain amount of time on the employer's premises before entering the portal of the

mine. These activities are referred to in the opinion of the District Court (53 F. Supp. 935, 938), where it is pointed out that upon arrival at the mines each underground worker first obtained his lamp from the company's lamp house near the portal, and that after securing their lamps various employees did various things before entering the portal of the mine, and that these preliminary activities required from three to ten minutes. The amount of time so spent varied, of course, with different employees and on different days. (Record of the District Court in that case, pp. 653, 668, 670).

The District Court held, in accordance with the decision of the Fifth Circuit Court of Appeals in *Tennessee Coal, Iron & Ore Company, supra,* that the time spent on the surface, consuming from three to ten minutes, was not a part of the workweek. This holding was not reviewed by the Circuit Court of Appeals, whose opinion related only to time spent in travel after entering the portal of the mine (145 F. (2d) 10). Similarly, the opinion of the Supreme Court pointed out that only the travel time issue was involved (325 U. S. 161, 163).

This case then adds nothing to the decision in the *Tennessee Coal* case.

There is nothing in either of these two cases which is in any way inconsistent with the decision of the Circuit Court of Appeals herein.

4. ADMINISTRATIVE RULINGS OF WAGE AND HOUR DIVISION ARE IN ACCORDANCE WITH THE RESULT REACHED BY THE CIRCUIT COURT OF APPEALS

The Wage and Hour and Public Contracts Divisions of the United States Department of Labor, which function under a single administrator in enforcing the wage and

hour provisions both of the Fair Labor Standards Act (Act of June 25, 1938, 52 Stat. 1060, 29 U.S.C.A. Sec. 201-219) and of the Walsh-Healey Public Contracts Act (Act of June 30, 1936, 49 Stat. 2036, 41 U.S.C.A. Secs. 35-46), have never undertaken to frame any rigid definition of the phrase "hours worked" as used in these related statutes. On the contrary, the administrative authorities have always treated it as a question of fact depending on all the circumstances of the particular case, and have recognized that under such facts as are here involved, employees may not properly be deemed to be "at work" the minute they punch the time clock.

In Paragraph 2 of Interpretative Bulletin No. 13 (1944-45 W. H. Man. 173, 2 C.C.H. Lab. Law Serv., par. 32,113), the Division states that, as a general rule, hours worked will include (1) all time during which an employee is required to be on duty, or to be on the employer's premises, or to be at a prescribed workplace (and here the proofs showed that the employees were not required to report on the employer's premises or to go on duty or to be at their prescribed working places before starting time); (2) all time during which an employee is suffered or permitted to work, whether or not he is required to do so (and in this case the employees had been instructed not to start work before starting time, and were not allowed to do so, R. 811, 1126, 1018).

Many of the administrative rulings relate to the use of time clocks. It is noted in paragraph 3 of Interpretative Bulletin 13 (1944-1945 W. H. Man. 173, 2 C.C.H. Lab. Law Serv. par. 32,113) that time clocks are an appropriate basis for recording hours worked only when they accurately reflect the period worked by the employee. This might be the case where an employee punches a time

clock on starting each new job during the day. But in a case like the present one, the administrative rulings recognize, the time clock cards do not accurately reflect the period worked.

Thus, the Administrator has instructed his field agents as follows in Inspection Field Letter No. 27 (Exhibit 113, R. 1471, reproduced at R. 1580), which provides in part:

> "SUBJECT: TIME SPENT IN ESTABLISHMENTS BEFORE OR AFTER REGULAR WORKING HOURS
>
> "1. Where employees enter their places of employment a short period of time (15 or 20 minutes) before the regular starting time and do so solely for their own convenience, and not because they are required or expected to do so by the employer, such periods shall not be considered time worked if the employees do not actually perform any work during the period.
>
> "2. Similarly, where employees remain at their places of employment for short periods (15 or 20 minutes) at the end of the day solely for their own convenience and not because they are required or expected to do so by the employer, such periods shall not be considered working time if the employees do not actually perform any work during the period."

In many other releases the Wage and Hour Division has recognized that time clocks are not normally an accurate record of hours worked. Some time ago, the Wage and Hour Division was asked for its advice as to the proper computation of working time where the employees rang in twenty minutes before their established starting time. In answering this inquiry the Regional Attorney for the Wage and Hour Division said (1944-45 Wage Hour Manual, 234):

"The Administrator realizes that a certain amount of latitude must be allowed employers where time clocks are used for recording hours worked. This is especially true in large plants, where thousands of employees must punch in and out at about the same time. A time clock is but one evidence of hours worked by employees. Employers may at the same time keep a record of the actual time worked by employees. If these records are kept in good faith by the employer and it is apparent to the inspector representing the Administrator that the disparity between the time shown by the time clock and the other payroll records is due to factors mentioned in the question, the payroll records will be given greater weight in determining hours worked."

The "factors mentioned in the question" were that a lapse of 15 to 25 minutes between the time an employee punched in and his regular starting time represents "the time between" the time clock and the job; and that an employee "might punch in at 7:40 but actually not start work until 8:00."

Similarly, in interpreting the related Wash-Healey Public Contracts Act (administered by the same Division of the Department of Labor) the Administrator held that a finding of overtime, based upon the punch-in time, was incorrect because it reflected more time than was actually worked. *In Re Conro Manufacturing Co. Inc.*, 5 W. H. Rep. 452, 464 (1942).

On another occasion, (5 W. H. Rep. 148) the Administrator was asked the following question:

"*Question*: At the present time our plant is engaged in production to fulfill a Government contract. To assist in keeping accurate records of the time worked by our employees, we have installed a time clock. As the employees do not punch out for

some time after they actually stop working on the machines, it has been our practice to deduct from the number of hours shown on the time card the amount of time elapsing between actual quitting time and the time the employees punch out. * * * Do these practices conform to the requirements of the Public Contracts Act?"

This question he answered as follows:

"*Answer* : Unless time-card records show the actual time that employees work, such records do not meet the requirements of the Regulations prescribed by the Secretary of Labor under the Public Contracts Act. As to recorded time, the Department makes allowances for a reasonable period of time to cover the period between the time an employee ceases work and the time he punches out on his card. However, a period in excess of fifteen minutes is regarded as unreasonable."

Again, the question was asked (1944-45 Wage Hour Manual, 1193):

"*Question*: Our time keeping office is some distance from the actual location of the work, so that it is necessary for a man to punch his card a few minutes before the starting of his shift in order that he will be at his place of work on time. Employees are paid, however, only from the time the shift begins until the shift is over. Is this permissible under the Walsh-Healey Act?

"*Answer* (Public Contracts Administrator): Under the facts you have given in this connection the Department will not question any reasonable time allowance to permit an employee to go from the time-keeping office to his place of work. The period of from five to ten minutes, as referred to in your letter, would not be regarded as working time under the Act."

In addition to the foregoing administrative rulings, which are precisely in point, other rulings could be cited which reveal administrative recognition of the fact that not all time spent on an employer's premises is working time: Thus in Release 1448 (2 C.C.H. Lab. Law Serv., par. 24,501.415, 1941) it was said that time spent traveling from fences, walls, or other anti-sabotage barriers to working places would not be considered to be working time. In Release 1739 (C.C.H. Lab. Law Serv., par. 24,501.103, 1942) it was ruled that clothes are changed on the employee's own time when he is free to wear his work clothes home.

In various other connections the Wage and Hour Division has recognized that what is working time is a question of fact (see, e.g., Release 1794 (1942) C.C.H. Labor Law Service par. 24,501.635, 5 W. H. Rep. 313; par. 14 of Interpretative Bulletin No. 13, 2 C.C.H. Lab. Law Serv., par. 32,113) and that in making this factual determination it is proper to examine the custom of the industry and the understanding of the parties. This is done not on the basis that custom or agreement can prevail against the requirements of the law; but rather on the basis that custom and the common understanding throw some light on the factual problem which is posed. Release 928 (1940) (2 C.C.H. Lab. Law Serv., par. 24,501.11); Release 1792 (1944-45 W. H. Man. p. 191). C.f., *Tennessee Coal Co. v. Muscoda Local et al.*, 321 U.S. 590, 603, recognizing the importance of custom in borderline cases or where precise computation is difficult or impossible.

In the instant case the custom and practice of the employer in making the computation of hours worked was in accordance with the method followed at substantially, if not absolutely, all other plants (R. 1237, 1340, 1459-61); and this practice was well known to the em-

ployees and was acceptable to them (R. 190, 191). Although the employees felt free to complain and did from time to time make complaints about wages and other working conditions, they never objected that they had worked longer hours than the Company's computations showed (R. 191). One of petitioners' witnesses, indeed, when shown the Company's computation and asked what that represented, replied that that was the hours which the witness had worked (R. 862). Another witness testified that it had never occurred to him before the suit was started that he had worked longer hours than the Company gave him credit for (R. 651).

This common understanding and agreement should be given appropriate effect. To do so would be in accordance with administrative rulings under this law, and with administrative rulings under other related laws. See 26 Opin. Att'y Gen.. 64 (1906), suggesting that hours of labor under the Eight Hour Law (Act of August 1, 1892, 27 Stat. 340) meant "eight hours of effective labor"; 9 Dec. of Comptroller General, 200 (1929).

5. THE FACTUAL DETERMINATION OF THE LOWER COURTS, THAT WORKING TIME DID NOT BEGIN WHEN EMPLOYEES PUNCHED THE TIME CLOCK, WAS CORRECT

It is the position of respondent that this question is not properly before the Court and should not be considered, both because of the usual rule that this Court will not review the concurrent findings of the lower courts, and also because of the fact that petitioners did not appeal from the adverse judgment of the District Court on this point.

But, in any event, we submit that it is clear on the record that the factual determination of the lower courts on this point was correct.

a. Findings Restated

We do not have to face the question as to what character is to be ascribed to preliminary activities which relate to getting ready for work. While under the decisions in the so-called "portal-to-portal" cases such activities are to be excluded from working time, yet the Master in this case was not required to pass upon this precise question because here there was no proof as to how much time was spent in such preliminary activities or whether the time so spent occurred before or after starting time. This finding of the Master was accepted by the District Court whose judgment was predicated on the conclusion that allowance of one or two minutes was ample to cover time spent in going to the department and completing all preliminary activities, which time was not deemed working time (R. 242-244). The conclusion of the District Court was that some employees must have begun actual work before starting time. It was only for such actual work that he sought to compensate them and not for the so-called "preliminary activities."

Likewise, the District Court found no error in the finding of the Master that the time spent walking along the aisles of the plant was not working time, and that the employees were not required to come in early enough to have waiting time, and that on occasions when an employee did arrive early, he was free to spend the time on his own behalf (R. 199).

The Circuit Court of Appeals accepted these findings.

It is these concurrent findings that petitioners attack.

b. As to Indicia of Work as Described by Supreme Court

Petitioners suggest that their activities after punching the time clock, in walking through the plant and waiting for their fellow workers, bear all of the indicia of work as listed by this Court in *Tennessee Coal, Iron & Railroad Company v. Muscoda Local No. 123, et al.*, 321 U.S. 590, and *Jewell Ridge Coal Corporation v. Local No. 6167*, 325 U.S. 161. We think, however, that tested by such criteria these activities may not be described as work.

i. Exertion

The first element to be considered under the test laid down by this Court is the presence of "physical or mental exertion (whether burdensome or not)." From a purely physiological viewpoint, a certain amount of exertion is doubtless involved in walking from the clock to the working place. The same would be true of the activities of two early arrivals who talked over yesterday's ball game while waiting for fellow workers to appear so that work could commence. But if this makes the time so spent a part of hours worked then by the same token an employee is entitled to be paid for time spent coming from his home to the factory. The test may not be applied so as to prove too much. There must be some starting point selected to determine when work begins. It could conceivably be put at the point where the insistent clamor of an alarm clock arouses the sleepy employee from his pleasant slumbers and he is compelled to make the effort of throwing back the covers, chasing off the last cobwebs of sleep and hoisting himself out of bed to face the hard reality of another day of work. It may perhaps be conceded that for some employees, at least, this is perhaps the hardest single effort of the entire day. But there has

not yet been heard a claim that hours of work begin at that point. The starting point must be fixed at that time when the employee commences those energy-expending activities which bear some immediate and appropriate relationship to the employee's actual job. In the case of the coal and iron mines, the journey down the shaft was uncomfortable, dangerous and perilous. The employees were required to proceed through dark and dangerous tunnels, often so low as to force them to crouch. Constant vigil against the perils of live electric wires and obstructions under foot was involved. The trip down the shaft did require substantial physical and mental exertion, in a degree comparable to that expended in actual work. But in this case there is no change in the character of the travel as the employee walks along the street, approaches the plant, and then passes the main gate, and then enters the building, and then passes the time clock, and finally arrives at the particular portion of the plant where he is to begin work.

ii. Exertion Controlled or Required by the Employer

In this case there is found no control or direction by the employer with respect to the employees' activities in walking to their respective departments and waiting for work to begin. It does not appear here, as in the mine cases, that the employees report at any "portal" or gate at a particular time, nor does it appear here, as it did in the mine cases, that company foremen rode on each "mine trip" accompanying the miners down the shaft and sometimes giving work instructions during the journey, and compelling compliance with numerous safety rules. In the mine cases, the employer organized, operated and supervised all the trips. Definite schedules were arranged. In this case, on the contrary, it was

established that employees were not required to report at any particular time nor were their activities after punching in and before starting actual work controlled by the Company. They were free to take such course through the plant as they might desire. They were free to stop off at any portion of the plant to converse with other employees. They were free to walk over to the Company's store to make purchases. Here the exertion was not controlled or required by the employer.

iii. Exertion Pursued Necessarily and Primarily for the Benefit of the Employer and His Business

Here again we face the necessity of establishing some suitable point to differentiate between those activities which are to be done on the employer's time (and included in the computation of hours worked during the workweek) and those which in the parlance of the shop are done "on the employee's own time." The trip from house to factory is necessary to enable the employee to start work, and its primary purpose is to bring the employee to his machine so that production may go on and the employer's business benefit. But it is not suggested that working time should start when the employee leaves his home. This point is too far removed from the beginning of actual work. In the so-called "portal-to-portal" cases in the lower courts (the decisions on this point not having been reviewed by the Supreme Court) employees variously argued that the point where working time begins should be fixed at (1) the point where the employees reached the employer's premises and enter the bathhouse to change clothes; (2) the point where the employees emerge from the bathhouse and occupy themselves with collecting tools, checking in, and killing time before reporting at the portal to start work; (3) the

point where employees actually report at the portal. The decision of the Fifth Circuit Court of Appeals in the *Tennessee Coal, Iron & Railroad Company* case, 135 F. (2d) 320, and the decisions of the District Courts in *Jewell Ridge Coal Corporation v. Local 6167*, 53 F. Supp. 935, and *Sunshine Mining Co. v. Carver* (D.C. Idaho, 1941), 41 F. Supp. 60, all agreed that the point at which working time begins was not reached until the employees entered the portal of the mine. Their mere presence on the employer's premises waiting for work to begin and perhaps spending isolated elusive moments in picking up tools, obtaining supplies, and making ready to go down the shaft was not to be included as work.

The time which the miners spent in such activities, like the time spent by petitioners after punching the time clocks and before starting work, was consumed primarily for the convenience of the employee. The precepts of many generations have bred in most workingmen a reluctance to be late. It is not easy to so arrange the trip from home to factory as to be sure of arriving at the latter destination precisely at starting time. It is more convenient to allow some leeway so that if all goes well the worker will arrive at the plant a little early. The employer, to be sure, could insist that the employees wait outside the plant until the whistle blows, but it is more convenient for the employees if they are permitted to come in, ring the time clock so as to register their attendance, and then spend their time as they please until starting time.

c. The Decision Below Accords With Common Understanding of the Meaning of the Term "Hours Worked" as Reflected by Court Decisions and the Testimony of Witnesses

To correlate time spent by factory employees walking along the clean, painted concrete floors of an attractive factory building, brightly illuminated and well ventilated, with time spent by miners in their molelike progress through the shafts of a mine, is to overlook fundamental factual differences.

These differences were noted by the Supreme Court in the *Jewell Ridge Corporation* case *supra*, where it was pointed out (325 U. S. 161, 666):

> "Those who are forced to travel in underground mines in order to earn their livelihood are unlike the ordinary traveler or the ordinary workman on his way to work. They must journey beneath the crust of the earth, far removed from the fresh and open air and from the beneficial rays of the sun. A heavy toll is exacted from those whose lot it is to ride and walk and mine beneath the surface."

This distinction was relied on by the Minnesota Court, in holding that not all time spent by lumber camp cooks on the employer's premises constituted working time (*Bicanic et al., v. J. C. Campbell Co.* (Minn., 1945) 19 N.W. (2d) 7, 8 W.H. Rep. 589); and by the United States District Court in Oregon, which refused to hold that travel time in lumber camps must be counted as hours of work. *Walling v. Smith Wood Products, Inc.* (D.C. Ore. 1945) 8 W.H. Rep. 796, 10 Lab. Cas. par. 62,743.

In factual situations analogous to those here involved, the lower courts have quite uniformly found that such travel time is not a part of hours worked. While they

are lower court decisions, their number and their uniform trend is, we think, persuasive.

In *Bulot v. Freeport Sulphur Company* (D.C. La. 1942) 45 F. Supp. 380, the claim of the plaintiffs was that their hours of work included time spent on company motor boats traveling from the mainland to an island where they worked in a sulphur mine, and included also time spent on the employer's premises after getting off the boat in the morning before the commencement of the daily work schedule, or while waiting for the boat after work; but the Court found on the facts that such time was not working time.

In *Gordon v. Paducah Ice Mfg. Company* (D.C. Ky. 1941), 41 F. Supp. 980, it appeared that employees who were engaged in packing ice into railroad refrigerator cars frequently waited intervals ranging from fifteen minutes to two hours after completing one car and while waiting for another car to come in. They frequently spent the time waiting on the employer's premises. The Court found that this waiting time was not working time.

In *Hanzely v. Hooven Letters, Inc.* (N.Y. City Court, 1943), 6 W.H. Rep. 966, it was held that time spent by a piece rate worker waiting for work to come in was not working time where the employer did not require him to wait and he spent his time as he pleased.

In *Thompson v. Daugherty* (D.C. Md. 1941), 40 F. Supp. 279, it was held that time spent by a mail truck driver waiting for his load of mail should not be included in his hours of work.

In *Jackson v. Mid-Continent Petroleum Corp.* (D.C. Okl. 1942) (not officially reported), 2 W.H. Cas. 540, the same ruling was made as to time spent by a truck driver at an employer's warehouse waiting for orders to work.

In *Dollar v. Caddo River Lumber Company* (D.C. Ark., 1941), 43 F. Supp. 822, it was held that time spent by an employee on his way to a lumber camp in a conveyance furnished by the employer should not be counted as work. The same is true of time spent returning from work, even though the employee at the end of the day may find himself 50 or 60 miles further away from home than at the beginning of the day. *Walling v. Mid-Continent Pipe Line Co.* (C.C.A. 10, 1944), 143 F. (2d) 308.

In *Southern Railway v. Black* (C.C.A. 4, 1942), 127 F. (2d) 280, the claim of the redcaps that they worked twelve hours a day was rejected, the Court pointing out that they were actually required to be on duty only for periods of about a half hour at a time when trains were coming into the station or leaving and that at other times the employees were at liberty to leave the station and frequently did so.

In *Cordell v. H. F. Wilcox Oil & Gas Company* (D.C. Okla. 1941) (not officially reported), 4 WHR 606, 5 Lab. Cas. par. 60,807, the Court found that an individual employed as a pumper on oil leases, who was required to be available during long periods of time in the event something should develop that would require his attention, such as repairing a pump, should not be deemed to be at work during the entire time spent on the premises.

In *Walling v. Peavy-Wilson Lumber Company* (D.C. La. 1943), 49 F. Supp. 846, it was held that travel time between a lumber "village" and the site in the woods where the actual cutting was done should not be included as working time. There apparently all of the travel was done on the employer's premises and in vehicles furnished by the employer. This case is of additional interest because it appears that the employees there claimed

compensation not only for time spent riding in company vehicles to the place of work but also made a claim for walking time consumed by some of the laborers between the time they got off the work train and the time they reached the actual point where they worked. In decreeing that this should not be considered work time, the Court pointed out that the time involved was so short that the issue was insignificant.

In *S. H. Robinson and Company, Inc., v. LaRue* (Tenn. 1941), 25 Tenn. App. 284, 156 S.W. (2d) 359, affirmed, 178 Tenn. 197, 156 S.W. (2d) 432, it was held that the hours of work of a watchman should be limited to those hours for which his services as a watchman were needed, and that he would not be permitted to build up a large claim for damages by secretly extending his hours, remaining on the premises for the ostensible purpose of watching them during periods when the employer did not need or require his presence.

Even under statutes such as workman's compensation acts which use broad phraseology in referring to injuries occurring within "hours of employment" or "in the course of employment," it has been frequently recognized that the mere presence of the employee on his employer's premises, while he is waiting or casually spending the time, should not be included as falling within his hours of employment. For example, in *Guastelo v. Michigan Central Railroad Company*, 194 Mich. 382 (1916), it appeared that plaintiff was employed in connection with repairing the railroad company's tracks, and that he lived in a bunk car furnished by the employer. He quit work one day at about 5:30 o'clock, and then put coal in an engine, changed his clothes and "hung around" until 6:00 o'clock, when he started to walk along the tracks toward his bunk car. He was hit by a train. In holding that he

was at such time not in the course of his employment, the Court said of the group of employees of which plaintiff was a member:

> "The only requirement of their hiring was that they work during working hours. Their time and pay started when they started work and stopped when they quit at quitting time. * * * he was through for the day and had earned his day's pay, his employer had no demand upon him or need of him, he owed it no duty, and was then master of his own time and movements until he should return at the appointed time the following morning to commence another day's work, when his pay would again start. * * * At the conclusion of his day's work he could go when and as he chose. He did not choose to leave for nearly half an hour . . ."

These decisions reflect the common understanding of working men and their employers as to when work begins. This common understanding must be considered in construing the Act. The phrases employed are not words of art. They derive their significance from that which they have developed in the everyday terminology of the working world. Recognizing this, Congress did not undertake to define the meaning of "hours worked" nor the meaning of "regular rate of pay." Undoubtedly, the reason for this, as pointed out by the Supreme Court in *Walling v. A. H. Belo Corp.*, 316 U.S. 624, 635 (1942) was that it was impracticable to do so in view of the fact that the employment relationships to which the Act applies are so various and unpredictable. The phrase was taken from the language used by practical men in their daily affairs and should be so understood.

One of the practical realities of operating a factory is that it is impossible for a group of one thousand or

more individuals to arrive at their places of work simultaneously. In respondent's plant it took a minimum of twelve to fifteen minutes to get the workers into the plant. In larger plants it takes about thirty minutes. It is in recognition of this plain fact that all plants have developed a custom of opening their doors and permitting employees to enter fifteen or thirty minutes before starting time.

The objective is to have everyone in the plant ready to go to work at starting time. To do this the individuals who lead the parade must enter the plant earlier than others. Some employees come in early one day; others will come in first another day. As they pass the time clock they register their presence in the plant for the day, the time clock being used primarily as an attendance record. As stated by petitioners' expert witness, the time of punching the time clock bears no direct relationship to the time of starting work (R. 1460). It has always been understood by employers and by unions representing the employees that hours of work begin at the time when the employee is required to be at his machine ready to go to work. This is reflected in countless collective agreements and shop rules (Exhibits 66-73, 92 (R. 965, 1350, 1463, 1473; reproduced at R. 1537-1542, 1549) and is in fact so commonly understood that in many collective agreements the matter is not specifically mentioned, it being understood that hours of work are so computed unless some contrary method is specifically agreed upon (R. 1349 *et. seq.*).

Any requirement that an employee must be paid for the time spent getting into the plant would be directly at odds with the practice which has prevailed in plants all over the country for many years. Such a requirement, should it be adopted—and we submit that Congress has

not adopted any such requirement—would necessitate drastic changes in time keeping methods universally employed. It would mean that nearly every plant in the country would be in violation of the law and that billions of dollars in retroactive overtime payments and liquidated damages could now be assessed against thousands of companies—and only because they have since 1938 figured hours of work in precisely the same way that the computation had been made without question for many years.

Such a result would not be helpful to the cause of labor. It would only open the door to demands involving minute, even microscopic determination of the precise number of minutes and seconds for which an employee could claim pay. If his wage must be paid from the moment he punches the time clock, should he not be paid also for the particular number of minutes or seconds that he spends in line waiting to punch the time clock? Should he not, indeed, be paid from the moment he enters the door? Bickering over such *minutiae* was not contemplated when the Fair Labor Standards Act was adopted. This was not one of its purposes. If employees were given a right to insist upon such a demand, employers would doubtless counter with requirements that employees must start work and become subject to strict control of management from the very moment they enter the company's premises. Doubtless, employers would likewise insist that after beginning work employees must keep at the job until quitting time. Any such requirement would retard the development of the beneficent practices of allowing rest periods, and time off for a "snack" on the job, and the privilege of quitting work a few minutes before quitting time when convenient (these practices, as the testimony shows, had all prevailed in respondent's plant).

Then, too, the practical difficulties of making any such a precise computation must not be overlooked. The Circuit Court of Appeals in the *Tennessee Coal* case relied in part on "the practical difficulties incident to the computation of isolated moments so elusive in character" (135 F. (2d) 320, 323), in denying the employees' claim for compensation for time spent on the surface. This thought, we believe, was reflected in the suggestion of the Supreme Court that custom and contract would be helpful considerations in determining the factual question of working time where precise computation is difficult or impossible or where the facts give rise to serious doubts as to whether certain activity constitutes work (321 U.S. 590, 603). Surely, such a case is here involved. The additional time and money which would be spent in making the precise computations required to determine to a fraction of a minute each day exactly how long an employee was in the plant, would involve costs much greater than any increase of a few pennies a day which the employees might be able to claim.

It should also be remembered, if the findings of fact herein are to be reviewed, that the testimony of the petitioners' witnesses in this case relates only to the time when they entered the plant in the morning. It is not hard to see why employees coming from a considerable distance, leaving their homes in the surrounding countryside to work in this small factory in this little town, would have often arrived early in the morning. Their claim might present a different question if there was testimony of activities performed on the employer's behalf after working hours. But at the end of the day employees frequently would finish work before quitting time and then after washing up would smoke and chat with fellow employees and walk over to the time clock so as to be able

to punch out exactly at quitting time. It would offend common sense to say that there was error in the concurrent factual determinations below that time spent on purely personal activities at the end of the day, or at lunch time, after quitting work, but before punching out, must be computed and paid for as hours of work.

IV. The Judgment of the District Court Cannot Be Sustained

One of the grounds on which the Circuit Court of Appeals rested its decision herein was the proposition that the District Court erred in refusing to accept the findings of fact by the Master. This point we have discussed above (p. 64), and we will not repeat these arguments.

Another ground on which the Circuit Court of Appeals relied in ordering petitioners' action dismissed was that the judgment of the District Court was arbitrary and based on surmise and conjecture (R. 1596). In view of the importance of this point, we should like to restate in some detail the arguments which persuaded the Circuit Court of Appeals to reach this conclusion. Such a statement, we think, will amply demonstrate the correctness of the conclusion reached in this respect by the Circuit Court of Appeals.

1. JUDGMENT OF THE DISTRICT COURT WAS BASED ON SURMISE AND CONJECTURE

The District Court, it will be recalled, ruled that an employee who entered the factory and punched the time clock more than 7 minutes before starting time at the beginning of the work day (or more than 5 minutes before starting time after the lunch period) should be credited

with an extra minute of working time for each minute that the ring-in time as shown on his time clock card preceded the times above stated, regardless of whether or not there was any proof that the employee started work before starting time. For example, an employee who punched the time clock 8 minutes before starting time would be credited with having started work one minute before the starting time (if at the beginning of the day) or 3 minutes before starting time (if at the beginning of work after the lunch period).

We submit that this formula was erroneous as being based on surmise, speculation and conjecture, unsupported by any substantial testimony, and representing only an estimate of an amount of overtime which might have been worked under hypothetical conditions but which estimate (a) was shown to be inaccurate as to many employees, and (b) was not shown to have any reasonable basis as to any employee, and (c) was not supported by proof of actual work done by any particular employee on any day.

c. The Formula Embodied in District Court's Judgment Was Not Supported by any Evidence

Even the testimony of petitioners cannot be construed to support the finding and judgment of the District Court. As the Master pointed out, the petitioners did not testify generally as to the time production work started (R. 175). Indeed, the insufficiency of the testimony in this respect was adverted to on several occasions by the trial judge. Note, for example (R. 1506), the District Court's characterization of the proofs offered by petitioners as "testimony that wasn't worth a continental."

Although there were nearly three hundred employees involved in the action representing some twelve produc-

tion departments, petitioners (in putting in their testimony in chief) called only seven witnesses representing four departments. On rebuttal, an eighth employee was called. We have at most, then, testimony from eight employee witnesses (out of some 280 or 290 in the suit) representing four departments (out of a total of twelve departments that were involved).

Two witnesses were called from the brushing and dipping department. Steve Anderson, the first named petitioner and president of the plaintiff Union, testified (R. 411) that he was at work half a minute after punching the time clock. However, on cross-examination this witness admitted that he could not recollect or state just what he did after punching the time clock card; he said that he was just averaging things up and giving a guess (R. 539, 550). He said that he did not know when he started production work (R. 539), and that he could not tell by looking at the time clock cards when they went to work (R. 533). The other petitioner called to testify as to conditions in the brushing and dipping department was Mrs. Lillian Socia. This witness originally said that she would begin production two or two and one-half minutes after punching in (R. 740). As above pointed out, the Master did not accept this testimony, nor did the District Court. She admitted on cross-examination that she had no recollection as to just how much time she may have spent on any particular day in talking to other employees and walking to her department (R. 769-775), and she finally admitted that the time of starting work would vary somewhat from day to day, and that her estimate was only a guess (R. 775).

Two witnesses were called from the clay shop: Metz and Larimer. Metz, on direct examination, said that it would take one or two minutes to get to the clay shop

department, after punching in at the time clock, adding voluntarily, that such estimate was only a guess (R. 610-611). On direct examination he merely said that after punching in he went to his department (R. 610). On cross-examination he admitted that it was sometimes after starting time when work started (R. 648).

Larimer, the other witness from the clay shop, claimed that he would go right to work when he got to the department (R. 696). This, of course, must be taken subject to the admitted fact that he could not begin production until his entire crew was on hand. Further, he was not referring to production work (R. 696).

In the decorating department in which were employed many of the claimants in this case, the petitioners offered no testimony to the effect that any of the employees in this department started work prior to the regular starting time. Only one employee witness was called from this department. She did not testify that she started work before the starting time but said only that after punching the time clock she went to her bench (R. 846). This can be understood in the light of other testimony that the girls in the decorating department would stand around the work benches and spend the time talking if they arrived in the department before starting time (R 1401). This witness did not testify that she started work after arriving at her bench. She did, on the contrary, say that the red pencil figures on the right hand side of the time clock cards were the hours she worked, which is exactly what the respondent claims (R. 862). She did not contradict the testimony of respondent's witnesses that work did not start before starting time (R. 1400-1403).

Three witnesses were called from the glost belt department. The first witness, Trombley, testified on direct exam-

ination that he punched in at fourteen minutes to the hour and went directly to work (R. 426). On cross examination he admitted that if the other employees were not ready for work when he arrived in the department it would be impossible for him to do any substantial amount of work (R. 453-455). He admitted that he couldn't say just when he started work on any day (R. 480, 516); he never timed himself (R. 458). Finally, he said that the department started at seven o'clock, which was, of course, the regular starting time (R. 484). The second witness from the glost belt department, Dacko, testified on direct examination that it took a minute or two to go from the time clock to his department, but he did not testify that he started work upon arriving in the department (R. 180, 905). On cross examination he admitted that work could not start until most of the entire crew was there (R. 927), and said that he could not fix the time of starting production nor could he recall as to any day what he did after punching the time clock and before starting work (R. 948). The third witness from the glost belt department, Pearl, did not even give an estimate as to when work started but contented himself with contradicting his own time clock cards and the testimony of other petitioners from the same department by saying that he punched in at fourteen minutes to seven, and had to run to get to the department because production had already started (R. 1484).

There is, to be sure, a claim by some of these witnesses that on occasion they started work before the regular starting time. *But there is nothing in their testimony to support any computation as to the amount of time that any of the petitioners may have spent at work on any day prior to the regular starting time* (even if the

Court could disregard the evidence presented in denial of these claims, and the demonstrated unreliability of the testimony of these witnesses, and the Master's non-acceptance of this testimony, all discussed above). There is no connection at all between the testimony of these plaintiffs and the formula adopted by the District Court, to the effect that all employees started work seven minutes after reaching the time clock in the morning, and five minutes after reaching the time clock in the afternoon, subject to the proviso that if they punched the time clock less than seven minutes to the hour (in the morning) or five minutes to the hour (in the afternoon), they proceeded more rapidly and started work by the regular starting time.

b. There is No Evidence to Support the Claims of Those Who Did Not Testify

It is certain, likewise, that there is no basis in the testimony of these witnesses for any finding as to when other individuals started work. For example, witness Trombley testified that he couldn't say how long it would take other employees in his department to get ready for work (R. 452, 456). Similarly, witness Metz testified that the time of starting work would be different for different individuals (R. 643-44).

Not only does the testimony of the witnesses who were called by petitioners fail to prove in any way what time other employees in those particular four departments may have started work, but it should be borne in mind that there is no testimony at all with reference to the time of starting work on the part of petitioners employed in other departments (except for Exhibits 100-102, R. 1382, 1385, 1391, reproduced at R. 1588-1566, introduced by the Company, showing that in some of the departments

it would have been impossible for an employee to start work before starting time or to work more than eight hours).

As to these many claimants who did not testify, the record does not contain even any proof as to when they entered the plant. The complete time clock records of only eighteen employees were introduced. Because of a misapprehension on the part of the District Court, who apparently thought that there was some evidence showing that most all of the 280 odd petitioners had at least punched the time clock by eight or nine minutes before starting time, the Court made its formula applicable to all the petitioners, although as to more than two hundred fifty of them there was before the Court neither any testimony to the effect that they started work early, nor even any record showing that they had entered the plant before starting time.

Can there then be any question as to the correctness of the Master's holding that petitioners did not prove their claims with sufficient accuracy to permit any computation? Can there be any question but that the formula adopted by the District Court is based only on conjecture and speculation? It cannot perhaps be said to be based on an average because there was not sufficient testimony presented to permit the striking of any average at all. The District Court said in its opinion (R. 242) that the Court was convinced that many of the petitioners were in the shop before starting time. This is probably correct. But then the District Court went on to hold that if the employees were in the shop before starting time, they must have started work before starting time. This determination is not based on any evidence, but is contrary to the testimony, and is based only on conjecture.

c. The Formula Embodied in the Judgment of the District Court Disregards Admitted Facts

i. No Basis for Distinction Between Morning and Afternoon Punch-ins

The formula, it will be recalled, adopts different rules as to the morning punch-in and the afternoon punch-in. As to the period when employees were coming into the plant to start their day's work, the District Court adopted the rule that an employee who punched in at the time clock between fourteen minutes and seven minutes before the regular starting time would be conclusively presumed to have started work seven minutes after punching in at the clock. As to the period when employees were re-entering the plant after lunch, the formula provided a conclusive presumption that employees who punched in at the time clock between fourteen minutes to the hour and five minutes to the hour started work five minutes after punching the clock. There is no reason given in the Court's opinion, nor can any basis be discovered in the record, for this two-minute differential between the morning punch-in and the afternoon punch-in.

We submit there can be no question but that it would take just as long to get the employees started back to work after lunch as it would to get them started to work in the morning. In fact, there is testimony that the employees were somewhat slow about getting back to work after lunch (R. 1023).

But there remains one even greater difficulty with the District Court's formula as it applies to employees coming in to start work after their lunch period. The Court overlooks the fact that the testimony of the petitioners related solely to the starting of work at the beginning

of the day. Petitioners' witnesses did not testify as to starting work early after lunch. The testimony of the respondent's witnesses is uncontradicted that the petitioners never started work before the established starting time after the lunch period.

ii. The Formula Does Not Take Into Account the Admitted Occasions When Employees Started Work Late

The very statement of the formula suggests one vital defect therein. If a man who punched in at ten minutes to the hour does not start work until seven minutes after he punches in, would not the same thing also be true of a man who punched in at three minutes to the hour? It is a poor rule which does not work both ways. If a formula is to be applied at all, should it not be applied in the same way to the case where a man punches in at three minutes before starting time as well as to the case where a man punches in at ten minutes before starting time, with the result that in the former case it would be ruled that the employee who punched the time clock at three minutes before the starting time did not start work until four minutes after the starting time?

This suggestion is not only logical but it is supported by the testimony. For example, petitioners' witness Metz said that he sometimes would not start work until after the regular starting time (R. 648). Respondent's witness Fitton testified that on frequent occasions many of the employees were just getting started to work at fifteen minutes after the regular starting time (R. 989). Seldom would he see anyone ready to go to work at the regular starting time (R. 993). Witness Starner testified that on the average people got started on production a little after the regular starting time (R. 1011). They would

quite often be five or ten minutes late (R. 1017). Witness Trabue testified that it was a matter of daily experience to find some of the girls coming in to the decorating department after the regular starting time (R. 1399).

Of course, if the District Court had given the formula its full effect, the result would have been entirely different. If a man who punched in at ten minutes before starting time on Monday (and thus was awarded three extra minutes of working time under the District Court's formula), on the next day punched in at three minutes before the regular starting time, he would have had four minutes deducted from the computation of his hours of work for that day. The result would be in many cases that instead of a determination of a few extra minutes of work during the week (which is the unit on which overtime is figured) there would be a determination that no overtime had been worked.

Further, the formula disregards the fact that petitioners admittedly often started work late and quit early. The Master specifically found that this would counterbalance any possible instances where work started early (R. 191). This finding was not discussed by the District Court. Similarly, the employees concededly took time off during the day. This averaged about 25 or 30 minutes daily (R. 1282). Yet the District Court's formula makes no allowance for these factors. They clearly should be recognized. If this were done, there would be no recovery.

d. Formula Was Based on a Misunderstanding of the Record

The District Court's opinion, in explaining the formula, states that upon examining the time cards the Court notices that whenever the starting hour was 7:00 o'clock, the punching of the clock would begin at fourteen min-

utes to seven, and by nine minutes to 7:00 o'clock, 75% of that shift had registered for work, and that by eight minutes to 7:00 o'clock only a few stragglers were left (R. 242). It should be borne in mind that the Court could not have examined the time clock cards for more than eighteen employees. It was only this number of cases where the collected time clock cards of an employee were put in evidence. It is clear that the Court's conclusion could not be based on the time clock cards of less than twenty employees, when the plant employed some 1200 employees. Certainly these eighteen sets of clock cards would not show what per cent of all the employees had punched in at eight or nine minutes to the hour. The testimony of the witnesses who testified as to the time when the bulk of the employees entered their respective departments, ready to work, stands uncontradicted to the effect that it was not substantially before the regular starting time (R. 989-990, 993, 1014, 1017, 1018, 1402-03, 1303-04, 1120, 1126-27). Application of the formula to the 18 employees whose clock cards were in evidence produces the following results (R. 277, et seq.; R. 299, et seq.), covering the full period involved in the suit. It will be noted there is no pattern whatever. Do not these figures demonstrate that the formula was not based on the time clock cards of these employees?

Exhibit No.		Amount Held Due as Overtime	Liquidated Damages	Total
1	Steve Anderson	$ 8.39	$ 8.39	$16.78
2	Earl Trombley	3.27	3.27	6.54
5	Rita Schulte	7.41	7.41	14.82
16	Mary Sawicki	9.64	9.64	19.28
31	John Metz	.24	.24	.48
34	Earl Larimer	.13	.13	.26
35	Lillian Socia	6.81	6.81	13.62

39	Goldie Broniecki (Not a plaintiff)			
58	Eva Freddle	7.09	7.09	14.18
62	Dorothy May	3.33	3.33	6.66
63	Nick Dacko	4.18	4.18	8.36
74	Delbert Phillips	.00	.00	.00
75	Wells Clay	.01	.01	.02
82	Clarence Burgess	8.67	8.67	17.34
83	Nelson Luchtman	10.37	10.37	20.74
93	Floyd Pearl	8.93	8.93	17.86
94	Harry Lozen	8.97	8.97	17.94
95	George Leibziet	2.67	2.67	5.34

This conclusion by the Court, then, was not based on an examination of time clock cards nor on the testimony of any witnesses, but was based necessarily on the interpretation which the Court erroneously placed upon Exhibits 97, 98 and 99 (R. 1378, reproduced at R. 1555). This is further apparent from the transcript of the proceedings of June 8, 1943 (R. 1502).

The Court's opinion, however, is based on a misunderstanding as to the nature and content of these three exhibits. These three exhibits show only the punch-in times of a group of about 200 employees, using one particular time clock during a designated 15-minute period on three specific days (R. 1375). These persons were not (except in occasional instances) the petitioners. Clearly, these exhibits do not afford any basis for a conclusion as to the normal time when the petitioners punched time clocks.

These exhibits were, on the contrary, limited to narrow purposes. They tend to show that the employees did not all punch in 14 minutes early, as petitioners claimed. They also tend to show how many employees could pass by the time clock in a minute. More particularly, they show (when compared with Exhibits 100, 101, and 102, R. 1382, 1385, 1391, reproduced at R. 1558, 1564, 1566) that even

in departments where there was no absolute physical impediment to starting work before the regular starting time, the employees punched in no earlier than in those departments where operations were on a three-shift round-the-clock basis and where there was no question but that the employees did not start work before the regular starting time. From this the natural inference (adopted by the Master, R. 186) was that since the sample group of employees punched in at approximately the same time as did employees in those departments where work could not have been started ahead of time, it should be presumed that the other employees likewise did not start work before the regular starting time.

Not only did the District Court err in assuming that these exhibits were some evidence as to the average or normal punch-in time for all the claimants, but the District Court apparently misinterpreted and miscalculated the figures appearing in these exhibits. The Court declared in its opinion that by nine minutes to 7:00, 75% of the shift had punched in (R. 242). It appears, however, that on Exhibit 97, 121 out of 208 employees, or 58%, had punched in by nine minutes to seven (i.e., between 6:46 and 6:50 plus fifty-nine seconds). On Exhibit 98 the corresponding figure is slightly under 59%, and on Exhibit 53 it is 53.5%. On the average then, between 56% and 57%—and not 75%, as stated by the Court—had punched in by nine minutes to 7:00.

Even if we add those punching in between nine minutes to the hour and eight minutes to the hour so as to ascertain how many had punched in by eight minutes to, we get only the following percentages:

Exhibit	97	72%
"	98	72%
"	99	65%

In other words, even by eight minutes to the hour (i.e., 6:51 plus 59 seconds), less than 70% of the employees referred to in these exhibits had punched in.

Again, the District Court's opinion says anent these three exhibits "by eight minutes to seven but a few stragglers were left" (R. 242). But we find, counting up those who punched in at eight minutes to or later, that this includes nearly 28% of the whole group shown on Exhibit 97, 28% again on Exhibit 98, and nearly 35% on Exhibit 99. Where approximately 30% of the group covered by these exhibits punched in at eight minutes before starting time or later, it can scarcely be said that by eight minutes to the hour only a few stragglers were left.

We submit, therefore, that it is clear that the District Court misunderstood these three exhibits and miscalculated the figures appearing on these exhibits. Yet it was on this misunderstanding and miscalculation that the formula was arrived at.

e. Formula Was Based on Assumptions of Fact Which Were Without Support in the Evidence

The District Court was apparently persuaded that some method should be devised to allow a recovery in favor of petitioners, as a result of certain assumptions of fact which the District Court made in its opinion, but which are clearly without support in the evidence, and contrary to the well supported findings of the Master. For example, the District Court declared, in connection with announcing this formula, that the evidence was not seriously controverted that the foremen told the employees when work would start and when to get there, and when they told employees that work would start at 6:45 they would also mention, or in some manner designate, the hour of 6:31 (R. 242). It would be difficult to say that this con-

clusion was supported even by the testimony of the plaintiffs. Certainly, it cannot be said that "the evidence was not seriously controverted." All of the foremen were definite in their denials of any such suggestion. They testified that they told the employees only to be in their department by starting time. Their testimony was not impeached and was accepted by the Master (R. 173. See R. 1005, 1040-41, 1205, 1305, 1311, 1399, 1406).

It is undisputed that no one was ever docked or penalized in any way if he was on hand by the established starting time, and there was no compulsion on anyone to get there before that time.

The District Court's opinion then says that respondent's witnesses admitted that at times when a crew was ready to work they might "jump the gun" and start work before the regular starting time (R. 243). This is scarcely an accurate statement of the testimony. Witness Starner said that it was possible that some employees might start a minute or two before starting time but not earlier than that (R. 1061), and he emphasized that instances where an employee might start a few moments early were more than counter-balanced by instances where the employee started work after the starting time and quit work early. This was the finding of the Master (R. 191). Respondent's witness Fitton was positive that employees did not start work before starting time. He said that it was very seldom that anyone would be ready to work by starting time, although a few employees might be seen fixing their scrappers at one or two minutes before starting time (R. 993, 994). In the brushing and dipping departments the foreman testified that occasionally an employee might have one or two pieces dipped before the regular starting time, but no more than that

(R. 1173). This would be a matter of a second or two. As noted above, there was no evidence by the petitioners as to work starting as much as a second before the regular starting time in the decorating department. And in the glost belt department (the only other department referred to in the testimony) the Company's witnesses all testified that the belt was started for production purposes at the regular starting time (R. 1472, 1302, 1233). It is clear that no work could be done in this department until the belt was started.

The Company's witnesses did not attempt to hide the fact that on particular jobs where it was physically possible for work to begin before the regular starting time, there were occasional instances in which an individual employee might start work one minute or possibly two minutes (but not more) before the regular starting time. However, the witnesses were clear that the average starting time was somewhat after the time set for beginning work. This was not to any degree contradicted by petitioners' witnesses. As pointed out in the Master's report (R. 175) the petitioners did not generally testify, in putting in their case in chief, as to when actual work was started. At least one of the petitioners admitted that it would sometimes be after the regular starting time before they started work (R. 648). Similarly, the petitioners readily agreed with the Company's witnesses that employees frequently quit work before the regular quitting time (R. 656, 669, 728). This was found by the Master to be a fact (R. 191), and this finding was not disturbed by the District Court. We submit there can be no doubt but that the Master correctly found that any occasional instances, where an employee might have "jumped the gun" by a few moments, were more than

counterbalanced by repeated instances where that same employee started work late or quit work early (R. 191).

However, the District Court, on the assumption that where employees were engaged on piecework operations they would start work before starting time as often as they possibly could, adopted the formula above set forth. We repeat, this assumption was not based on the record but represented rather the Court's personal guess or belief (R. 243). The record is replete with testimony that the employees did not start promptly but instead stood about and talked if they arrived in their department before starting time—and the Master so found. The Court's assumption was further based on the Court's misunderstanding that the bulk of the employees were shown to have been in their departments and ready to go to work considerably before starting time.

The District Court's Supplemental Opinion of March 30, 1944 (R. 287) refers to a re-examination by the Court of the testimony. At that time neither the transcript nor the exhibits (save Exhibits 97-99) were in the custody of the Court, and the Court's reference must be to these three exhibits and to the briefs which had been filed.

Some mention should also be made of other observations found in the District Court's opinion as to the facts of the case, which are important since they apparently were persuasive factors in inducing the Court to believe that some formula should be devised which would allow some recovery to the plaintiffs.

The District Court in its opinion stated that the Company through its foremen had sought to circumvent the Fair Labor Standards Act (R. 243). We submit that there is no support in the record for such a finding. We

find nothing in the testimony of the petitioners to support it. The testimony of respondent's witnesses, which was believed by the Special Master, and also the uncontroverted circumstantial evidence, strongly indicate the error of this finding.

At the time the Fair Labor Standards Act was enacted the General Manager of the Mt. Clemens Pottery Company called a series of meetings at which the law was explained to the foremen, and they were instructed that it would be the policy of the Company to limit hours of work to the maximum straight time hours permitted under the statute, and they were told that it would be their responsibility to see that this policy was carried out. The matter of the Wage Hour law was frequently discussed at weekly foremen's meetings, and the foremen were reminded of their responsibility to make sure that no employee was working longer hours than permitted (R. 987, 1008, 1306, 1162). The employees were instructed not to start work before the regular starting time (R. 810, 811, 1018). There is abundant testimony that these instructions were carried out and that employees did not start work before the regular starting time, and that except in cases where overtime was specifically authorized, employees did not work more than 40 hours a week during the period, since October 24, 1940, when this was the maximum for straight time (R. 987, 1009, 1186, 1405-06). The petitioners themselves did not state that they worked more than 40 hours a week. The most that any of the petitioners claimed—and this by inference rather than direct statement—was that they sometimes started work ahead of the established starting time in the morning. They did not testify that (taking into consideration days when they started late, and taking into consideration periods during the day when they were not at work, and

taking into consideration the frequent occasions when they quit early) they worked more than 40 hours a week. Indeed, the witness Freddle said that the Company's computation of her hours of work as recorded on the time clock cards represented the hours that she worked (R. 862).

The Company's foremen testified that they were repeatedly instructed that they must make sure that the provisions of the Act were complied with in their respective departments. Fitton testified (R. 987) that the foremen were instructed at foremen's meetings not to permit employees to work in excess of the number of hours specified in the Wage Hour law, and that those directions were carried out in his department. Starner testified to the same effect (R. 1008) and added that he insisted that the employees must not start work before starting time (R. 1018). Likewise, Harms said that the instructions that employees should not work more than 40 hours a week were carried out in his department (R. 1186). Trabue explained that the girls employed in his department actually worked fewer hours than the hours of work as computed by the Company (R. 1405-06). Stief explained that the Wage and Hour law was frequently discussed at foremen's meetings, and the general manager of the Company cautioned the foremen to abide by the law (R. 1306).

The Company's whole course of conduct was inconsistent with any attempt to evade the law. A Company which voluntarily increased rates and paid its employees large sums of extra compensation beyond their earnings (as discussed *infra*) would not have undertaken to deprive its employees of extra half time pay for a few seconds or minutes a day. It would not have taken the risk of incurring liability for a breach of the statute. If

any thought had occurred that retention of customary methods of computing hours worked might involve a violation of the law, the Company would have increased the computation of hours of work. It could have done this without cost, in fact, as discussed above. Further, the amounts here claimed are picayune when compared with amounts of extra compensation voluntarily paid the employees (R. 277-284). The Master's report reviews in detail the various matters of circumstantial evidence which make it clear that the Company would not have profited by any attempt at evading the law in the method which petitioners claim was adopted. The Master likewise pointed out that any such course of action would have been entirely inconsistent with the Company's established practices and policies (Master's Report, R. 188-191).

There can be no question but that this Company made a *bona fide* effort to comply in all respects with the law. The Master was convinced of this (R. 189). The District Court did not point out any error in this finding.

We submit that the record fairly supports the conclusion that the employer did not know of any instances where employees worked overtime. It is clear that the employer had no notice of any such claim. Indeed, the employees did not make any such claim for the reason (as testified by Metz, R. 651) that it did not occur to them that they were working overtime.

The employer not knowing of any uncompensated overtime work being performed by the petitioners, or any of them, it must be concluded that the employer did not suffer or permit the petitioners to work uncompensated overtime. It therefore is not liable in this action. *Fox et al. v. Summit King Mines, Ltd.* (C.C.A. 9, 1944), 143 F.

(2d) 926. See also *Stein v. Gordon Bros., Mfg. Co.*, (D.C. Mo. 1942), 43 F.Supp. 249, and *Jackson v. Derby Oil Company*, 157 Kans. 53, 139 P. 2d 146 (1943).

f. Formula Was Inconsistent With Uncontradicted Testimony

Not only is this formula based on a misunderstanding of the exhibits, and on an assumption of facts which are without support in the record; but the application of the formula is in many respects inconsistent with the uncontradicted testimony.

The formula allows five minutes for the group of workers to punch through the time clock (R. 243), but the record shows that on the average there were approximately 200 employees and upwards, using each time clock during each 14-minute punching period, and that an average of not more than twenty-five employees could punch the time clock per minute (Master's report, R. 183-84; Exhibits 97-99, R. 1378, reproduced at R. 1555-57, and the testimony of witnesses Doll, Sr., R. 1125; Doll, Jr., R. 1228; and Wright, R. 1341). This would mean that it would take at a minimum eight minutes for the employees to get by the time clock, as pointed out by the Master (R. 184) and by the District Court (R. 1501). Since the employees started in at fourteen minutes to the hour, it would be six minutes before the starting hour before the employees could even get by the time clock. But the District Court's opinion erroneously assumed that most of the employees had punched in at the time clock by eight minutes before starting time, and that five minutes was a reasonable allowance for getting the group of employees by the time clock (R. 242, 244).

Even if there were any showing that substantially all of the employees had punched in at the time clock by six minutes before starting time (it could not have been

earlier than this, as pointed out *supra*), still it is clear that they could not start work until they had at least walked to the departments where they worked. All of the lower courts agreed on the factual finding that the time so spent was not, in these circumstances, work time.

If, then, it be said that the majority of the employees had punched in at six minutes to the hour, and that it took them two or three minutes to walk to their departments, we would then find that the employees would not even be in their departments until three or four minutes to the hour.

Those who got there that early would wait for the others to come in, so that, after all the members of the crew had arrived, work could begin.

At the very best, then, it would be less than three minute before starting time before there would be any possibility for work to start even in those departments where the employees could turn on their own machinery whenever they were ready, and start work as soon as their group was assembled.

Yet the District Court's formula results in many employees being credited with starting work seven minutes before starting time.

But, of course, we insist it would not be enough to support any recovery for petitioners even if it were shown (we repeat, there has been no such showing) that most of the employees were in their departments before the regular starting time. The petitioners would have to show not only that they were in their departments (and they did not show this) but also that they started work before starting time; and as the Master pointed out (R. 175) the petitioners did not generally testify as to when they started production. The attempt of the District

Court to meet this lack of proof by adopting the formula in question leads to many strange results.

For one thing, the District Court's formula overlooks the fact that the employees in most departments did not work individually but in groups. In some departments the employees worked in groups of three; in other departments the groups were much larger. Whatever the size of the group, no individual in the group could start work until the entire crew was at work. Suppose, for example, that in a group of three employees one individual punched in fourteen minutes before starting time, the second individual at ten minutes before starting time, and the third individual at seven minutes before starting time (the record, as above noted, discloses wide variations in punch-in time). None of them could possibly start work until the man who punched in at seven minutes before starting time had gone to his department and was ready to work. Under the formula, one of these three men gets credit for seven minutes extra work, the second gets credit for three minutes of extra work, and the third gets no extra credit. Yet there can be no question but what they all started work at the same time.

Similarly, under the formula adopted by the District Court, recovery is allowed employees in those departments which were on two-shift or three-shift operations, where one man succeeded his predecessor on the same machine. Here we have a case where one employee is engaged in operating a machine until the quitting time for his shift. That quitting time is coincident with the starting time on the next shift, when another employee takes up the operation of the machine. Yet, under the District Court's formula, the employee, who could not possibly start to operate the machine until his predecessor had stepped aside, is given credit for as much as

seven minutes extra work. The situation is, of course, most striking in those departments which were on three-shift operations, and where the effect of the Court's formula is to rule that it takes as much as twenty-four hours and thirty-six minutes for three employees to operate a machine twenty-four hours a day.

The formula is again inconsistent with the testimony in that it allows recovery on the basis of 80 minutes extra "time worked" in a five-day week, in the case of an employee who regularly punched in as soon as the time clock opened. However, as the Master's report points out, even if time spent in preliminary preparatory activities could be computed and were counted as "time worked," still "such time under the most liberal estimates could not have aggregated over one-half hour per week" (R. 202). The District Court allowed more than the petitioners' most liberal estimates.

g. Findings Too Vague and Indefinite

The District Court in its opinion announced that it agreed in the main with the findings of the Master that there was no proof of work being done before starting time (R. 241), but ruled that such findings would be modified by application of the presumption that an employee started work seven minutes after punching the time clock. Apparently, this overruled only the Master's finding of fact that work did not start before the regular starting time. There are, however, many other findings of the Master which the District Court did not challenge and which are entirely inconsistent with any such formula.

For example, the Master found that if an employee ever did start work early, this was more than counterbalanced by occasions when the employee started work

late and quit work early (R. 191). The District Court did not question the finding (indeed, some of the petitioners themselves admitted, as discussed above, that they sometimes started work after the starting time and often quit early). Yet the formula which was adopted as the basis of the District Court's judgment, is entirely inconsistent with these admitted facts. They are not taken into account.

Again, the District Court's findings state only that *some* of the employees started work early (R. 272). Yet the formula was made applicable to *all* employees represented in the action and resulted in an allowance of additional time worked in cases where an employee was on a job where it would have been physically impossible for work to have started before the starting time.

2. Review of Decisions Denying Recovery in Wage-Hour Law Suits Where Award Could be Based Only on Surmise and Conjecture

Applicability of the well established general rule (that a judgment or verdict cannot rest upon mere guesses, estimates, averages, speculation or conjecture) to actions brought by employees under Section 16 (b) of the Fair Labor Standards Act, is established by many cases.

Particularly interesting and closely analagous to the particular situation here involved is the decision in *Townsend, et al., v. New York Central Railroad Co. et al.*, (C.C.A. 7, 1944), 141 F. (2d) 483. In that case the claim was made that approximately one thousand redcaps had been paid subminimum wages. Petitioners sought to prove their case by calling nineteen witnesses who testified that they reported having received greater tips than they had in fact received, and that, as a result, the employer (who paid them the difference between the tips re-

portedly received and the minimum wage required by the law) had underpaid them. In affirming the decision of the District Court that judgment must be for the defendant because the plaintiffs had failed to prove their case, the Court said at p. 485:

> "... the lower court concluded as a matter of law: 'The burden was on each of the plaintiffs to prove by a preponderance of the evidence that he did not receive the wages that he was entitled to receive under the Act from his respective employer-defendant for one or more specific pay-periods during the time covered by this action.'
>
> "We think there can be no question concerning the correctness of this conclusion. *Johnson v. Dierks Lumber & Coal Co.*, 8 Cir., 130 F. 2d 115; *Epps v. Weathers*, D.C., 49 F. Supp. 2; *Feldman v. Roschelle Bros.*, D.C., 49 F. Supp. 247. Under plaintiffs' stated theory of liability, this burden required plaintiffs to establish not only that excessive tips were reported, but the amount thereof, as well as the pay period during which they were so reported. This is so, irrespective of the charge or proof concerning coercion, for the reason that it would be immaterial whether the reporting of tips in excess of the amount received was the result of coercion, mistake or otherwise.
>
> "Furthermore, even though the court had found that the 19 plaintiffs who testified had reported tips in amounts greater than received, as a result of coercion or for any other reason, such a finding could not support a judgment as to the remaining 1,072 plaintiffs. In addition, the testimony of the plaintiffs who testified was speculative and uncertain as to any amount which that particular plaintiff reported over the amount received. We agree with the lower court that the burden was upon each plaintiff to prove the amount reported

in excess of that received before that plaintiff would be entitled to judgment. All of the plaintiffs having failed to offer proof in this respect, it follows that none of them were entitled to judgment."

In the instant case the claim was that some 280 or 290 employees had started work before the established starting time, and they attempted to prove it by calling eight witnesses, some of whom (but not all) gave testimony from which it might be inferred that they claimed to have sometimes started work before the starting time. They did not even estimate how much before starting time they started work (see Master's Report, R. 175). Some of the petitioners' witnesses did not testify that they ever started work before the regular starting time. There was no substantial testimony at all with reference to those who did not testify. Nor is there any proof as to the weeks when the alleged overtime was worked; in many weeks, employees worked less than 40 hours on any method of computation. Surely such testimony could not support a judgment as to some 250 or 300 employees. The rule is the same whether the uncertainty relates to the amount of wages paid or the amount of time worked. *Young v. Andrews* (D.C. Ga. Oct. 10, 1944), not officially reported, 7 W. H. Rep. 1040, 8 Lab. Cas. par. 62,365, involved an action by two porters employed at the depot of an interstate bus line. They claimed in part that they had not been properly compensated for overtime. The plaintiffs sought to establish their hours of work by proof that they were required to meet the first bus in the morning and remain until the last bus at night. Schedules of the bus lines were introduced to establish the hours thus encompassed. However, the testimony of the plaintiffs as to the irregularity of their time off and as to the variance of hours during periods when other help was

employed, made it impossible to determine exactly what hours they worked. The Court said:

> "As will be seen from the above findings of fact, the court finds it impossible to ascertain with any degree of certainty the amount of overtime work performed by the plaintiffs. It might be stated that the court is satisfied that some overtime was performed but, it being impossible to determine except by guess or speculation the amount thereof, it is not deemed proper to allow recovery for overtime and its consequent time and a half recovery, plus an equal amount as liquidated damages."

The Fifth Circuit Court of Appeals has applied this same rule in cases where, as here, the claim was based upon the theory that the plaintiffs had worked longer hours than they were paid for. In *Jax Beer Co. v. Redfern* (C.C.A. 5, 1941), 124 F. (2d) 172, the Court held that statements as to the amount of hours worked "on an average" would not support a verdict. In that case, neither of the two plaintiffs (drivers of delivery trucks employed by a beverage distributor) was able to testify as to the number of hours worked each day, but testified that "on the average" they worked from seven in the morning until nine at night. The Trial Court concluded that there was sufficient evidence to support a verdict, and entered judgment; but this was reversed, the Appellate Court holding that the evidence was so uncertain and conjectural that it would not support the verdict, ruling (p. 175).

> "To uphold the findings and judgment of the lower court we must base decision upon the guess, speculation, and averages made up from uncertain recollections of these appellees. This we refuse to do."

Similarly in *Bowman v. Pace Co.*, (C.C.A. 5, 1941), 119 F. (2d) 858, where there was a question as to whether plaintiff was an employee of defendant, the Court held that judgment was properly directed for the defendant, and pointed out there was a total lack of evidence as to how many hours plaintiff devoted to the service for which he sought compensation; and observed that the jury could have computed no verdict upon such a claim.

Interesting in this same connection is the language of the Fifth Circuit Court of Appeals in *Tennessee Coal and Iron Mines v. Muscoda Local No. 123* (C.C.A. 5, 1943), 135 F. (2d) 320, 323, where in denying a claim that time spent in preparatory activities should be counted as time worked, the Court stated as one of the bases of the denial "the practical difficulties incident to the computation of isolated moments so elusive in character."

Inasmuch as in such a case as this there is no cause of action unless overtime has, in fact, been worked in excess of what the employer's records show, greater certainty of proof is required than in cases where a cause of action admittedly exists and the only question is the amount of damages. *Roberts v. Hoarel* (D.C. Tex. 1941) (not officially reported), 4 Lab. Cas. 61,933. See also *Simmons v. Straight Improvement Co.* (D.C. N.Y. 1944) (not officially reported), 7 W.H. Rep. 1060, 9 Lab. Cas. par. 62,394, where the Court declared:

> "The burden is on the plaintiffs to establish the amount of overtime they worked. Their obligations include proving that item by evidence which is definite and clear."

A large number of decisions by lower courts exhibit so unanimous a trend as to be particularly persuasive as to the correctness of the following three points.

1. The burden of proof is on the employees to prove with reasonable certainty the amount of overtime worked.

Randolph et al. v. Calamas et al. (D.C. Ga. 1944), 8 W.H. Rep. 21; affirmed (C.C.A. 5, 1945), 8 W.H. Rep. 1029 (not yet officially reported);

Wilkinson v. Noland Co. (D.C. Va. 1941), 40 F. Supp. 1009;

Prins et al. v. Skaff (D.C. Mich. 1942), 47 F. Supp. 430;

Cordell v. H. F. Wilcox Oil & Gas Co. (D.C. Okla. 1941), 5 Lab. Cas. par. 60,807, 1 W.H. Cas. 815 (not officially reported);

Hayes v. General Tire Service, Inc. (D.C. Tex. 1941), 4 Lab. Cas. par. 60,698, 1 W.H. Cas. 707 (not officially reported);

Toppin v. 12 East 22nd Street Corp. (D.C. N. Y. 1944), 8 Lab. Cas. par. 62,032, 7 W.H. Rep. 217 (not officially reported);

Rich v. March (D.C. Tex. 1942), 2 W.H. Cas. 819, 6 W.H. Rep. 135 (not officially reported);

Vigiano v. Arena & Tona, Inc. (N.Y. Sup. Ct., Westchester Co., 1944), 8 Lab. Cas. par. 62,058, 7 W.H. Rep. 313 (not officially reported).

Even if the employer does not keep accurate records showing the precise number of hours worked, this failure does not in any respect ease the employees' burden of proof. In this case, the employer's records of hours

worked are, we submit, accurate, and in fact credit the employees with more hours of work than they had actually worked (R. 1406); but we think the point is significant as showing how far the courts go in requiring that employees who claim to have worked longer hours than they were paid for, must establish with reasonable certainty how many hours they worked.

> *Wilkinson, et al., v. Noland Co.* (D.C. Va. 1941), 40 F. Supp. 1009;
>
> *LaVann v. J. B. Kaufman, Inc.* (D.C. N.Y. 1944), 8 Lab. Cas. par. 62,308, 7 W.H. Rep. 790 (not officially reported);
>
> *Clevanger v. W. M. Ritter Lumber Co.* (Ky. App. 1943), 6 W.H. Rep. 674; 172 S. W. (2d) 625;
>
> *Feldman v. Roschelle Bros., Inc.* (D.C. N.Y. 1942), 49 F. Supp. 247.

In the last cited case plaintiffs sued for overtime and testified only from recollection as to hours worked. No records were brought forward in support of their claims. The employees had punched time cards but claimed they worked before and after punching their cards. The employer stated that the employees were absent some days, but no one knew what days. The Court refused to assess overtime damages, saying, 49 F. Supp. 247, 249:

> "If I accepted the testimony of the plaintiffs in its entirety, I would have a great deal of difficulty in computing the damages, but I do not accept their story as true in all respects. That being the case, it becomes impossible for me to determine during what periods the plaintiffs worked later than 4:30 P.M. From the evidence I cannot state

any one week in which the plaintiffs worked overtime. Any assessment of damages I might make would be pure speculation under the facts.

"While the law requires the defendant to keep a record of overtime, the failure of the defendant to so do is not evidence upon which I can compute these plaintiffs' overtime. The burden was on these plaintiffs to prove that they worked overtime and how much overtime they worked. The evidence as to the claimed overtime for any of the periods is vague, uncertain and does not carry the quality of proof to induce conviction. I cannot make a guess as to when the plaintiffs worked overtime or for how long."

2. Judgment may not be based on speculation or conjecture as to the number of hours worked by the employees. This point is stressed particularly in the following cases:

Mornford v. Andrews (C.C.A. 5, 1945), 151 F. (2d) 511;

Collins v. Burton-Dixie Corp. (D.C. S.C. 1944), 53 F. Supp. 821 (affirming Master's report);

Lowrimoore v. Union Bag and Paper Corp. (D.C. Ga. 1939), 30 F. Supp. 647, 1 W. H. Cas. 251;

Gerdert, et al. v. Certified Poultry and Egg Co. (D.C. Fla. 1941), 38 F. Supp. 964;

Mortenson v. Western Light & Telephone Co. (D.C. Iowa, 1941), 42 F. Supp. 319;

Jackson v. Derby Oil Co., 157 Kans. 53, 139 P. 2d 146 (1943);

Cintron v. Bull Insular Line (D.C. P.R. 1944), 7 W. H. Rep. 1062, 8 Lab. Cas. par. 62,378 (not officially reported);

Mosier v. The Retail Credit Co. (D.C. Kans. 1942), 5 Lab. Cas. par. 61,054, 5 W.H. Rep. 338 (not officially reported);

Williams v. O. G. Carlstedt (D.C. Tenn. 1940), 1 W. H. Cas. 299, 3 W.H. Rep. 1943 (not officially reported);

Clevanger v. Ritter Lumber Co. (Ky. App. 1943), 6 W. H. Rep. 674; 172 S.W. (2d) 625;

Willett v. Magnolia Petroleum Co. (D.C. Tex. 1941), 4 Lab. Cas. par. 60,348 (not officially reported);

Rosen v. Weissman (N.Y. City Ct. 1942), 5 W.H. Rep. 938, 2 W.H. Cas. 1055.

3. No judgment may be rendered in favor of claimant employees in an action under the Fair Labor Standard Acts where the testimony as to the amount of time worked is stated in terms of averages, estimates, or approximations. In this connection, see:

Epps v. Weathers (D.C. Ga. 1943), 49 F. Supp. 2;

Moore v. Perkins Dry Goods Company (D.C. Tex. 1942), 5 Lab. Cas. par. 60,940, 5 W. H. Rep. 168 (not officially reported);

Dollar v. Caddo River Lumber Co. (D.C. Ark. 1941), 43 F. Supp. 822;

Campbell v. Watts (D.C. Tex. 1942), 2 W.H. Cas. 325, 5 W.H. Rep. 360 (not officially reported);

Spier v. Gulf Coast Beverages, Inc. (D.C. Fla. 1943), 50 F. Supp. 653;

Gorchakoff v. California Shipbuilding Corp. (D.C. Cal., 1945), 8 W.H. Rep. 1109, 10 Lab. Cas. par. 62,811 (not officially reported);

Ralston v. Karp Metal Products Company (N.Y. Sup. Ct. 1942), 38 N.Y.S. (2d) 764, 179 Misc. Rep. 282;

Pelta v. Lach-Simkens Dental Laboratories, Inc. (N.J. Cir. Ct. 1942), 6 Lab. Cas. par. 61,263, 2 W.H. Cas. 1009, 5 W.H. Rep. 695.

V. Dismissal of Petitioners' Claims on Grounds that Respondent Had Already Paid Them Extra Compensation Many Times in Excess of the Amounts Claimed by Them Under the District Court's Judgment

While at all times denying that any uncompensated overtime was worked, respondent raised in the District Court a separate issue as to set-off.

This question was separately argued before the District Court, after the filing of the Court's original opinion, the Court having reserved arguments thereon. The precise inquiry was whether or not the amount of any judgment which might be rendered in favor of any of the petitioners should be satisfied by deducting, from the sums found to be due as extra compensation for overtime (under the formula adopted by the Court), the amounts of extra compensation voluntarily paid the petitioners

during the same period in excess of their agreed wages and overtime.

The Court's finding of September 13, 1943, recited that (R. 273) since the Court had reserved this question for further argument, the computations to be made by the Company should show both (a) the amount due under the formula adopted by the Court, and (b) the amount of extra compensation paid to each of the petitioners during the period covered by the computations.

The computations thus made showed that the total amount of extra compensation for overtime (computed as required by the Court's opinion) was $1,207.87 for 289 individuals, or an average of not quite $4.18, or approximately a penny a day. The extra compensation voluntarily paid these 289 individuals during the same period, in excess of their agreed wages and overtime, was $16,640.19, or an average of slightly over $57.57 (R. 285).

The District Court ruled (R. 291) that the set-off for which respondent contended should not be allowed. The Company, in appealing the judgment of the District Court to the Circuit Court of Appeals, alleged error on this ruling and it was included in the statement of points on which the Company relied on its appeal (R. 366). The point was presented to the Circuit Court of Appeals by brief and oral argument. That Court's opinion did not discuss this issue, having concluded on other grounds that the action must be dismissed. We submit, however, that even though the District Court's formula could be sustained, still it should be held that these payments of extra compensation may be applied to extinguish petitioners' claims.

1. THE NATURE OF THE EXTRA COMPENSATION

The nature of this extra compensation, which we claim should have been set-off against the recovery allowed under the District Court's opinion, was described as follows by the Master (R. 188):

> " . . . the company twice a year . . . made payments to its employees in addition to their regular piece rate earnings equal to approximately one week's pay each time . . . If the company had been trying to reduce its labor costs, would it not have occurred to it to cut out these payments, rather than take the chance of being found guilty of violation of the Wage and Hour Act, with the attendant double liability?"

It was agreed by all the witnesses that these sums—approximately two weeks' wages per year—were paid as extra compensation to the employees during the period covered by the action, each semi-annual payment representing two per cent of each employee's wages during a period of twelve months preceding the date of the payment (R. 1161). The payments were described by the Company as extra compensation (R. 813, 1393), and the petitioners so understood them (R. 736, 552).

There is, therefore, no doubt as to the fact that these payments were considered as compensation for services and not a mere gift to the employees. Indeed, as a matter of law, it seems clear that the payments must be treated as compensation for services rendered. Since the amount was measured by the earnings of the employees, and was treated by the payor as compensation, it would be required that the sums so paid be treated as wage payments. *Willkie v. Commissioner* (C.C.A. 6, 1942), 127 F. (2d) 953.

These payments of extra compensation were not granted as vacation payments, or as payments in lieu of vacation. The payments were made to employees who did not take vacations, and the payments did not coincide with the time of vacations (R. 814, and see Exhibits 6A, 85, 2B (R. 1300, original exhibits transmitted to this Court)). The most that can be said is that some employees considered that the payment of this extra compensation in the summer could be used to defray the expenses of a vacation. During the period involved, three payments of extra compensation were made. One of them was made during the summer and two of them were made at the year's end. Therefore, as to two-thirds of the amount of extra compensation received by each of the petitioners, there can be no suggestion that it was intended as vacation pay.

2. REASONS FOR ALLOWING THE SET-OFF

Under these facts there is presented a clear and narrow issue—whether or not all extra compensation paid by an employer to his employee, over and above the employee's regular rate, will be taken into consideration in determining whether or not the employer has paid that employee, over and above his regular rate, "not less than one and one-half times the regular rate" extra compensation for overtime as required by the Fair Labor Standards Act. In terms of this case, the question is whether or not an employee may establish a claim for extra compensation under the statute despite the fact that the employee has already received more extra compensation than he was entitled to under the statute.

As a matter of principle, the issue seems clear. A purpose of the Fair Labor Standards Act is to improve

the economic position of the working man by requiring payment of extra compensation if he works overtime. The statute places no limit on the maximum amount of such extra compensation. If an employer chooses to pay extra compensation in sums greater than the total obtained by multiplying the overtime hours by 150% of the employee's regular rate of pay, the employer is free to do so. As said in *Walling v. Belo Corp.* (1942) 316 U.S. 624, 632, the only requirement of the Act is that the overtime rate be not less than 150% of the basic rate "but the Act does not prohibit paying more."

The petitioners here claim (in accordance with the findings of the District Court) extra compensation. We say that the Company has already paid them extra compensation in sums greater than those which they claim and that, therefore, nothing more is due. It should not be said that because an employer has paid more than the law requires him to do, the employee may go back (keeping, of course, what he has already received) and compel the employer to pay a second time, computing the amounts exactly in accordance with the statutory formula.

If it had been specified by the employer, at the time these extra payments were made, that they were to be applied on any claims for unpaid wages or overtime compensation, there can be no question but that such application would be mandatory. Of course (and this possibility apparently occurred to the Master, R. 188), if the employer had any idea that the employees were secretly building up a claim that odd minutes spent in the plant before or after work should be paid for as hours worked, the employer would either have withheld the payment or stipulated in writing that it should be applied in satisfaction of any such claim.

It does not comport with American standards of justice to say that because the employer failed to exact such a stipulation at the time the extra compensation was paid, a group of employees who accepted the extra compensation may now compel the employer to pay still further extra compensation, especially where the employees' later claim is based upon the alleged inaccuracy of a time-keeping system which with full understanding of all the parties had been followed without objection over a period of many years. In such a case as this, there is room for application of the common law doctrines of estoppel.

3. THE PROPRIETY OF SUCH SET-OFF HAS BEEN JUDICIALLY RECOGNIZED

Precisely the same issue as that here involved was before the Court in *Corey v. Detroit Steel Corp.* (D.C. Mich. 1943), 52 F. Supp. 138, decided by another judge of the same District Court. In that case the Court found that the plaintiff employee had worked 1,102½ overtime hours for which he should have been paid time and a half, and that the difference between time and a half due for this overtime work and the straight time which had been paid to plaintiff amounted to $689.06. The Court further found that during this same period the employer had paid to plaintiff the sum of $400 as extra compensation under the term "bonus." The Court held that this $400 must be deducted from the amount due as extra compensation for overtime, leaving a balance of $289.06. To this there was added an equal amount as liquidated damages, the Court concluding that in calculating the amount due plaintiff, all of the payments received by him, including the bonus, should be taken into consideration, and that deduction of the amounts already paid must be made be-

fore any calculation of the statutory "additional equal amount as liquidated damages."

In reaching this conclusion, Judge Lederle cited and relied on *Bumpus v. Continental Baking Company* (C.C.A. 6, 1941), 124 F. (2d) 549. In that case the Court faced the question as to what effect should be given to the fact that certain extra compensation had been paid plaintiff over his regular rate, but in sums less than required by the Fair Labor Standards Act. The employee in that case had received extra compensation equal to one-third of his regular rate for hours in excess of forty-eight. It thus bore no relationship to the statutory requirement of time and one-half for all hours in excess of forty. Nevertheless, the Court held that all such amounts so paid plaintiff must be deducted in determining the amount due. The Court further held that such deduction must be made before calculation of the statutory "additional equal amount as liquidated damages."

In at least two other cases arising under the Wage and Hour law the courts have reached a similar result. In *Owens v. Gifford-Hill Pipe Co.* (D.C. Tex. 1941), 4 Lab. Cas. par. 60,735, 4 W.H. Rep. 697, in denying recovery in an employee's suit under the Fair Labor Standards Act, the Court pointed out that plaintiff's testimony as to wages received failed to take into account benefits he received, such as loans, electricity, the use of a parking lot for his trailer, etc. Similarly, in *Moore v. Perkins Dry Goods Co.* (D.C. Tex. 1942), 5 W.H. Rep. 168, 5 Lab. Cas. par. 60,940, the Court in denying recovery in such an action declared:

> "It does not occur to him that he received from the defendant $100 when he did not work at all, while he was sick, and other sums for holidays when he did not work at all, and things of that sort."

In other types of cases the same conclusion has been reached. See *Johnson v. Fuller & Johnson Mfg. Co.*, 183 Wis. 68, 197 N.W. 241 (1924), and *Keysaw v. Dotterweich Brewing Co.* (App. Div. N.Y. 1907), 121 App. Div. 58, 105 N.Y. Supp. 562.

It should be borne in mind that we have here not a case of evasion of the law. At most, the result of the case in the District Court was that the Company was found to be technically in error by a matter of a few minutes a day in making a precise computation as to the amount of time worked by each individual—and the Circuit Court of Appeals found that the Company was not in error at all. The Company used methods which are usual and are admittedly proper in plants where employees are paid a salary or hourly rate on the basis of hours worked, but the District Court concluded that this ordinary method could not properly be used in a shop where employees are paid piece rates. Yet the Company had been using this customary method, in good faith, for a long period of time. It had been going along for many years employing 1,000 or 1,200 persons in a comparatively small city, and no question had been raised by any of the employees as to the correctness of the Company's method of computing hours of work, although they well understood the method, and although they felt free to make objections (R. 190).

What is the fair thing to do? Is it not just and equitable—and certainly in accordance with the statute—to take the whole deal, and say to each individual employee that even if he should have been paid some $4 or $5 additional compensation over the wages and overtime which he had received, yet he has not been harmed because he has already received some $50 over and above the amount due him? As suggested by the District Court during the oral arguments (R. 1509), there can be no doubt but that

if the employer had suspected that any such a claim for overtime compensation would be made, it would have protected itself by providing, in making these payments of extra compensation, that such payments should be received in satisfaction of any claim an employee might have for overtime. As was conceded by the District Court on the oral argument (R. 1509) there would be no question as to the effectiveness of such stipulation and agreement.

We submit that every argument of fairness and equity, as well as purely logical arguments based upon the language of the Act, require such set off.

4. DECISION OF DISTRICT COURT

In a Supplemental Opinion filed March 3, 1944 (R. 287), the District Court stated that it was the position of respondent that these payments "whether they be called bonuses, gifts, gratuities or extra compensation, can now be deducted by it from the amounts" [allowed under Court's formula] "in determining the amount of the judgment to be entered in favor of each individual" (R. 289). This, however, was not our claim. The position was, rather, that the payments in question were payments of extra compensation, not gifts (R. 267). We think this position was made clear. In the hearing held on this question on January 4, 1944 (R. 1510), the District Court agreed that "all the evidence shows that it is extra compensation."

The District Court's supplemental opinion (R. 287) then cited the decision in *Corey v. Detroit Steel Corp.* (D.C. Mich. 1943), 52 F. Supp. 138, and said that the decision in the *Corey* case was easily distinguishable be-

cause in the instant case the payments in question were a bonus or gratuity given voluntarily and without compulsion (R. 290). This, of course, was likewise true in the *Corey* case. There is no distinction. The *Corey* case is unquestionably on "all fours" with the instant case (R. 1512). The District Court then says that since these payments were intended as a gift or gratuity, it would savor too largely of "Indian giving" to permit the amounts of these payments to be set off against the recovery allowed, as was done in the *Corey* case (R. 291). But this suggestion by the District Court that the amounts so paid were intended as a gift or gratuity is quite contrary to all the testimony in the case.

G. REPLY TO BRIEF OF APPELLANTS (PETITIONERS)

It was necessary for respondent to place its brief in the hands of the printers before receiving the brief of petitioners, in order that respondent's brief could be filed with the Court before the case (which is on the call for the week of January 7, 1946) is reached for oral argument. Subsequently, we received a copy of petitioners' brief. It being too late to have our brief re-printed, we are appending thereto at this point such additional statement as appears to be required with reference to petitioners' brief.

Petitioners' brief does not contain any complete, consecutive, or comprehensive statement of facts. Throughout petitioners' brief, however, there are found various argumentative statements concerning various aspects of the case. We feel compelled to point out to the Court

that petitioners' brief is replete with statements which are not supported by the record. Many of them are in fact contradicted by the record. We comment, *infra*, on some of these instances but space limitations preclude answering all of them. We must respectfully ask the Court, as to the numerous statements made in petitioners' brief without reference to the record, not to accept such statements unless support therefor can be found in the record. In many instances no such support can be found. As to statements asserted on the basis of references to the record or transcript, we must respectfully ask the Court to check such references carefully since in many instances they do not support the statements as made.

A large portion of petitioners' brief is devoted to the argument of the following three points: First, that petitioners should have been given a judgment computed on the basis that employees must be paid for all time elapsing from the moment they punch the time clock on entering the factory until the moment they again punch the time clock on leaving the factory; secondly, that employees should have been given a judgment for the cost of certain tools which they paid for and which were used by them in performing their work; third, that judgment should have been entered in favor of substantially all employees of respondent, including hundreds of employees or former employees who were not parties to the action.

As to all these three points the judgment of the District Court was against the petitioners and in favor of respondent company (indeed, the third point was not even argued in the District Court). The petitioners (plaintiffs in the District Court) did not file any appeal or cross appeal to the Circuit Court of Appeals and, consequently, these points were not presented to the Circuit Court of

Appeals and, we submit, are not before this Court. In this connection, may we refer to our argument at p. 72, *supra*.

I. Reply to Petitioners' Statement of Questions Involved

We submit that the questions before the Court on this appeal are those stated by us at p. 6, *supra*, and that petitioners' brief does not correctly set forth the questions here involved.

The question is not (as petitioners state in I—petitioners' brief, p. 1) whether employees are entitled to compensation for time spent performing production work, but whether any employees performed any work for which they were not compensated.

Petitioners' statement of the second question said to be involved (petitioner's brief—p. 3) suggests that the judgment of the District Court was based on the proposition that the employees should be paid for a certain portion of the time spent walking from the time clock to the job. They assert that the question is whether the District Court may "adopt a reasonable formula by which employees may be reimbursed for certain travel time spent upon employer's premises, at employer's request." This question, likewise, is not involved. The District Court did not undertake to reimburse employees for travel time on the employer's premises. Instead, as we have pointed out *supra*, pp. 4, 5, 19, et seq., the District Court held that time spent by the employees in punching the time clock, walking to their places of work, and there perhaps waiting for their fellow workers to arrive, should not be counted as hours of work.

Petitioner's question III (p. 3—petitioner's brief) complains of the refusal of the District Court to compel the

employer to pay for certain tools used by the employees. The District Court held that the employer should not be required to do this and the employees did not appeal from this adverse holding of the District Court. We submit the question is therefore not involved.

Petitioners' question IV (petitioners' brief—p. 4) is a restatement of the third question as stated by respondent at p. 7 *supra*. In restating it, the petitioners suggest that the real question is whether the employer may offset against claims for overtime compensation "gratuities" given employees "several years before." This, of course, assumes that the payments in question were gratuities rather than payments of extra compensation. We have pointed out *supra*, pp. 135, 141, that this assumption is incorrect. The suggestion that the payments of extra compensation had been given "several years before" is misleading. The payments in question were made at the same time and for the same period with respect to which the claims of the employees are asserted.

Petitioner' question V (petitioners' brief—p. 4) complains of the order of the District Court (R. 29, 32) requiring the designation of plaintiffs and limiting the action to such individuals as appropriately indicated their desire to be included as parties to the action. This question again is not involved because the employees did not at any time appeal from this ruling.

It may be noted, however, that the order of the District Court in this respect represented the common practice in these suits. Similar procedures have been adopted in many cases.

Abram v. San Joaquin Cotton Oil Co. (D.C. Cal. 1942), 46 F. Supp. 969;

Lofther v. First National Bank (D.C. Ill. 1941), 45 F. Supp. 986;

Archer v. Cornillaud, (D.C. Ky. 1941), 41 F. Supp. 435;

Gordon v. Paducah Ice Mfg. Co., (D.C. Ky. 1941), 41 F. Supp. 980;

Shain v. Armour & Co., (D.C. Ky. 1941) 40 F. Supp. 488;

Fellabaum v. Swift & Co., (D.C. Ohio) 7 Lab. Cas., par. 61,868;

Wilson v. F. J. Egner & Sons, Inc. (D.C. Ohio), 8 Lab. Cas., par. 62, 178;

Dolan v. Day & Zimmerman, Inc. (D.C. Mass), 8 Lab. Cas., par. 62,189.

Petitioners' question VI (petitioners' brief—p. 5) raises the point as to whether pieceworkers are entitled to overtime pay under the Fair Labor Standards Act; but this question is not involved for respondent agrees that the Fair Labor Standards Act does apply to pieceworkers.

Petitioners' question VII (petitioners' brief—p. 5) is apparently intended to furnish a foundation for an argument that a District Court may refuse to accept the findings of fact by a Special Master even though such findings are supported by the great preponderance of the testimony and are not shown to be clearly erroneous, and that the District Court's refusal to accept such findings may not be challenged unless it appears that the District Court acted in bad faith or that its action constituted an abuse of discretion. But this argument cannot be advanced so long as Rule 53 (e)(2), Federal Rules of Civil Procedure, remains in effect.

II. Reply to Petitioners' Statement of Facts

1. REPLY TO PETITIONERS' GENERAL STATEMENT (pp. 6-10, Petitioners' Brief)

This section of petitioners' brief seeks to create an impression that there was evidence tending to prove that all the employees started work immediately after punching the time clock and continued at work until punching out, thus contributing "as much as 16 minutes a day" of uncompensated labor. But there is no evidence to support any such conclusion, and none is cited. The brief asserts (p. 8) that the employees "went directly from the time clock to their departmental assignments." This must be taken as meaning that they went to their departments and started work, but there was no proof of this. As pointed out in the Master's report (R. 180), some of the employees did not state when they started work after arriving in their departments. Those who did testify on direct examination that after punching the time clock they went to their departments and started work admitted on cross-examination that they could not say just when they started work, and that the time of starting work would vary from day to day, and that on some days work would start after the starting time. The evidence as to the time of starting work in various departments is reviewed in full *supra*, pp. 42-61).

The allegation (p. 7, petitioners' brief) that the action sought recovery of the statutory minimum wage of 30¢ an hour should perhaps be mentioned. While it is true that the complaint (R. 9) recited that some employees earned less than 30¢ an hour, yet there were no proofs offered in support of any such claim, nor was any such claim included in the pre-trial statements of the issues on which the case was tried. (See p. 12, *supra*).

It should not be understood from the assertions on p. 8 of petitioners' brief that the time spent by dippers in stirring the glaze is a part of the activities which were referred to by the courts below as "preliminary activities." Stirring the glaze was a part of the dipper's job and was counted by the Company as actual production work (R. 1178).

As to the assertion that the entire department could punch through the time clock in a minute or a minute and a half, we refer to p. 34, *supra*.

Petitioners argue (p. 9) that since the employees were on a group piece work job "each employee saw to it that his co-workers in the undertaking rushed into productive labors without delay." There is no evidence to support this statement and none is cited. This falls within the category of things which petitioners announced they would prove but did not (see comments of District Judge, R. 1506).

Petitioners then assert (p. 9) that "the procedure of the named plaintiffs was followed by other employees." The record reference does not support this conclusion. Rather, the fact is, as we have pointed out, p. 105 *supra*, there is no evidence as to any of the employees who did not testify ever having started work early.

Petitioners' brief (p. 9) refers generally to a requirement that employees punch the time clock "as much as fourteen minutes before the regular starting time," and to an alleged repetition of the "process" at noon and at the end of the day, with the implication that employees worked 14 minutes longer than they were paid for on four occasions per day "so that in many instances this amounts to as much as 56 minutes a day, that is, as much as fourteen minutes time was 'contributed' by employees four

times a day." All this is sought to be supported by a reference to R. 414, the testimony of petitioner Anderson. This reference in no way supports the assertions. As pointed out *supra*, p. 40, it was in fact clearly established on the record that employees were not required to, and normally did not, punch in 14 minutes before starting time. This is referred to in the report of the Master (R. 177, 180, 185) and the opinion of the District Court (R. 243). It was established beyond doubt that employees did not continue work after the regular quitting time but rather quit work early. This is pointed out in the Master's report (R. 182) and is referred to in the opinion of the District Court (R. 244). Neither was there any testimony (as pointed out *supra*, p. 108), as to employees starting work early on returning to the plant after the lunch period.

We do not attempt to refer to all the instances where in our opinion petitioners' brief incorrectly states the facts. We could refer to many others—e.g., the reference (p. 10) to objections by employees (as the Master pointed out (R. 190)—the fact is that none of the employees objected), or the reference (p. 10) to "strikes over the matter" (the testimony being that in the course of the two strikes referred to, no demands at all were made with reference to this matter—R. 1299).

2. REPLY TO PETITIONERS' STATEMENT AS TO WAGE AND HOUR DIVISION (pp. 11-13, Petitioners' Brief)

It is not a fact, as suggested at pages 12-13 of petitioners' brief, that the Wage and Hour Division of the United States Department of Labor found that the respondent company had incorrectly computed the hours of work of employees. The brief incorrectly treats Exhibit

91 as representing a determination by a representative of that government agency. That exhibit (R. 1323, reproduced at R. 1547) is a letter which was written subsequent to the period involved in the suit. It does not purport to represent the conclusions or findings of the author as to respondent's practices. As is evident from an examination of this letter, it refers not to any investigation or finding by the Wage and Hour Division but only to "information received" at the offices of the Wage and Hour Division—received doubtless from the employees and their counsel.

The fact is that the Wage and Hour Division had inspected the plant of the respondent company in 1939. That was the only inspection made during the period involved. The results of that inspection are disclosed in Exhibits 29 and 81 (R. 600, 1159, 1165—original exhibits transmitted to this Court) and the testimony of Mr. Doll (R. 1156-1160). The only finding of the Wage and Hour Division was that during the first year of operations under the statute, respondent company had committed one technical error in computing overtime on a bi-weekly basis rather than on a weekly basis. This error had been cured in 1939, nearly two years before the suit was filed, and was not involved in the suit.

A reading of petitioner's brief might give an incorrect impression as to the testimony of witness Reifin who had been an employee of the Wage and Hour Division. He was called as a rebuttal witness. He did not, however, deny that during the inspection, which he had assisted in making in 1939, he had complimented the company on the completeness with which its records were kept (R. 1157) and had advised that the employees had no complaint to make (R. 1216). Nor did he testify that he had made any finding that petitioners worked for longer peri-

ods than they were paid for. As pointed out by the Master (R. 158) "a careful study of Mr. Reifin's testimony indicates that he nowhere states he told the company it was working its employees before and after the established shift periods for which they were credited."

3. REPLY TO PETITIONERS' ARGUMENT THAT RESPONDENT COMPANY ORDERED EMPLOYEES TO REPORT FOR WORK AT A PARTICULAR TIME (pp. 14-16, Petitioners' Brief)

It is charged on p. 14 of petitioners' brief that those employees who did not report on the job before the regular starting time were sent home or given time off. Reference is made to the testimony of Anderson and Mrs. Socia. Petitioners, however, fail to point out that the testimony of Anderson on this point was found by the Master to be unworthy of belief (R. 182) and that the testimony of Mrs. Socia was likewise discredited (R. 181). Petitioners likewise fail to point out that the District Court declared in its opinion that "there is no evidence, as contended for by plaintiffs, that if the employee didn't get there at 14 minutes to seven, he was fired" (R. 243). As pointed out by the Master (R. 177) the time clock cards showed no consistent pattern of early punch-ins.

The assertion (p. 14) that the District Court found that respondent company ordered its employees to do work before the regular starting time for which the employees received no wages, is not supported by any record references and is in fact entirely unfounded.

We must likewise point out the error of the assertion (p. 14) that the foremen "admitted the facts to be as outlined by the appellant-employees." We have discussed in detail the testimony of the foremen on this point, *supra*, pp. 114, 115.

4. REPLY TO PETITIONERS' DISCUSSION OF COMPUTATION OF WAGES (pp. 16-20 Petitioners' Brief)

This section of petitioners' brief is devoted principally to an argument concerning what are called "wage deductions." The complaint is that the Company required certain classes of employees to furnish some of their own tools, just as a bricklayer furnishes his trowel. The facts as to this matter are set forth in the Master's report (R. 203 et seq.) and briefly summarized in the opinion of the District Court (R. 244 et seq.). We respectfully refer the Court to these findings for a correction of the assertions made in petitioners' brief.

The decision of the District Court was to the effect that nothing in the Fair Labor Standards Act required the employer to furnish tools to his employees; and these claims of the employees were denied. The employees (petitioners herein) did not appeal from this adverse decision of the District Court and, we submit, the issue cannot be raised here. However, in view of the assertions made in petitioners' brief in this connection, we should like to point out the position of the Company at the trial that in fact there were no deductions from wages (R. 1132, 1138); that the deductions were not deductions from wages at all but just one of the factors involved in their determination, the cost of any tools purchased by the employee being taken into consideration in fixing the piece rates, and the employee's gross wages being the amount left after such deductions had been made. (See report of Master, R. 205 and R. 1138). It should perhaps be also noted that the regulations of the Wage and Hour Division recognize the propriety under the statute of making deductions from an employee's wages for tools purchased by that employee from the employer unless the effect of such deductions is to reduce the wages of the em-

ployee below the statutory minimum wage (1944-45 Wage Hour Manual, p. 259; 6 W. H. Rep. 33), and there is no such claim here. It should also be pointed out that the decision in *Walling v. Peavey-Wilson Lumber Company* (D.C. La. 1943), 49 F. Supp. 846, relates to a case involving deductions that brought the employee's cash wages below the statutory minimum.

Without attempting to answer this section of the brief in detail we think we should perhaps reply to the charge made at p. 17 that the Company admitted making up to 33-1/3% profit in marking up the articles which it bought and sold the employees. The testimony is that the Company's operations in selling tools to employees who desired to buy their tools from the Company were conducted at a loss (R. 1287).

5. REPLY TO PETITIONERS' ARGUMENT THAT THERE IS CONCLUSIVE EVIDENCE AS TO HOURS WORKED (pp. 20-22, Petitioners' Brief)

At p. 20 of petitioner's brief it is asserted that "the plaintiff employees all testified that they and the other employees observed by them, all began production work immediately after checking through the time clocks." This charge again is quite unsupported by the record references cited. An accurate summary as to the testimony on this point is found in the report of the Master (R. 175), who pointed out "the employee witnesses did not testify generally as to the time production started."

The argument of this section of petitioners' brief is that the time clock cards showing the time the employees entered and left the plant must be accepted as showing their hours of work—that an employee must be conclusively presumed to be at work the moment he enters the plant and rings the time clock. This argument we have covered *supra*, pp. 73-99.

As to the summary on p. 21 of petitioners' brief we reply (1) the employer ordered the employees to be ready for work at the regular starting time—not before; (2) the employees did not show that after punching the time clocks they immediately went into productive work; (3) the ring-ins and ring-outs on the time clock cards do not show the hours and minutes worked by the employees. Both of the lower courts so found.

III. Reply to Petitioners' Argument

1. AS TO ARGUMENT THAT WORKING TIME BEGINS WITH CHECKING IN AND ENDS WITH CHECKING OUT (p. 23-28, Petitioners' Brief)

Again we must point out that assertions of fact are made without reference to the record which in fact cannot be supported by the record. For example, on p. 23 it is asserted that the only records kept by the employer were the time clock cards. The fact is, as we have pointed out *supra*, pp. 31 *et seq.*, the time clock cards were used primarily as attendance records only. The company kept permanent records of the hours worked each day by the employees and a copy of the company's computations as to the hours worked was subsequently written on the right-hand margin of the time clock cards for the information and convenience of the employees. Similarly, the allegation that the employees here involved prepared themselves for their productive tasks before checking through the time clocks is quite incorrect. The testimony is to the opposite effect. See pp. 45-59, *supra*.

It is charged on p. 28 that the District Court specifically found that the respondent company "required its employees to report for work at 14 minutes to 7:00 o'clock in the morning, starting them practically imme-

diately, and yet computed their hours from 7:00 o'clock continuing this practice throughout the day so that, in fact, the employees worked as much as approximately 56 minutes every day, which time was never computed in determining overtime." Petitioners refer to R. 240. Reference indicates that the Court was stating this as the claim of the plaintiffs, but the Court found that this claim was not proved. On the contrary, it was found that employees were not required to and normally did not punch in 14 minutes before starting time and did not work after quitting time (R. 177, 182, 243, 244). In other words, the finding of the District Court was precisely the opposite of what petitioners assert the finding to have been.

The argument at p. 28 that the vast majority of the employees had checked through the time clocks more than 10 minutes before starting time and that by 8 minutes to the hour only a few stragglers were left, has been discussed *supra* pp. 109-113.

The Circuit Court of Appeals and the District Court both accepted the factual findings of the Master that on these facts working time could not be computed as extending from the time of ringing in to the time of ringing out. This we have discussed *supra* pp. 15-22.

The various arguments demonstrating the correctness of this factual holding (on which all the Courts agreed) we likewise have discussed *supra*, pp. 81-99.

We have also pointed out (*supra*, p. 71) that this point is not properly before the Court.

As to the argument based on the decisions of this Court in *Tennessee Coal, Iron & Railroad Company, et al. v. Muscoda Local* 123 et al., 321 U.S. 590 and in *Jewell Ridge Coal Corporation v. Local No. 6167, et al.*, 325 U.S. 161, we think we need add nothing to our discussion at pp. 73-80, *supra*.

The cases cited in the footnote on page 26 of petitioners' brief are not helpful under the factual situation shown to exist here. One of the cases referred to is *Ballard v. Consolidated Steel Co.*, (D.C. Cal. 1945), 61 F. *Supp.* 996. That case involved a question as to the working hours of certain guards and firemen. In its opinion the District Court (at p. 1005) specifically referred to the decision of the Circuit Court of Appeals in the instant case and pointed out that its decision was not in conflict with the decision of the Circuit Court of Appeals herein. Another case referred to, *Ulle v. Diamond Alkali Company* (D.C. Ohio, 1945), 8 W. H. Rep. 1043 (not officially reported) was a consent judgment entered pursuant to a stipulation of the parties. The decision in *Edmondson v. Yellow Truck & Coach Company* (D.C. Mich. 1945), 8 W. H. Rep. 187 (not officially reported) involved payment to plant protection men for time spent attending roll call, standing inspection, receiving instructions, etc. *Alberts, et al. v. Porter, et al.* (D.C. Ill. 1945), 10 Lab. Cas. par. 62,809 (not officially reported) was a similar case. In *Walling v. Frank* (D.C. Ky. 1945), 62 F. Supp. 261, it appeared that the employees were required to oil and clean machinery and to sort and assemble certain tickets outside of the regular hours of work. The Court held that the time spent in these activities should be deemed to be a part of the hours of work. Similarly, in *Walling v. Blue Mt. Logging Company, Inc.*, (D.C. Wash. 1942), 6 Lab. Cas. par. 61,466, it was held that time spent by employees oiling, adjusting and warming up their engines as well as certain waiting time of truck drivers should be included in computing hours worked. None of these cases bear any resemblance to the factual situation here involved.

Petitioners cite *Sunshine Mining Company v. Carver* (D.C. Idaho 1941), 41 F. Supp. 60, as holding that em-

ployees must be paid for the time spent in going from the time clock to the work benches. What this case in fact held was that working time of miners included time spent in descending from the portal of the mine, going down the shaft to the usual place of work, and time spent at the end of the day returning up the shaft. The Court ruled against the contention of the employees that they should be deemed to be at work during the period in which they were engaged on the company's premises in changing their clothes, picking up tools, preparing themselves for work, etc.[3]

2. REPLY TO ARGUMENT AS TO THE EFFECT OF THE DECISION OF THE CIRCUIT COURT OF APPEALS (pp. 29-31, Petitioners' Brief)

We respectfully point out that counsel for petitioners are in error in stating that the Circuit Court of Appeals treated this case as an ordinary travel time case and completely misconstrued the District Court's decision (peti-

[3] That case was before the Court on a petition of the employer for a declaratory judgment. Paragraph 13 of the third amended complaint filed in the action recited in part that the employees complained that all time spent by an employee from the time he left the "dry" or change house until he returned to the "dry" were hours of employment. This is to be understood in light of the Court's finding of fact No. 15 that before reporting for work in the morning many of the employees changed to their working clothes at a building called the "dry," and some who so desired picked up electric lamps or obtained carbide for their carbide lamps, etc. The claim of the employees that the time so spent in making preparations for work should be included as a part of their hours of work was answered by the Court's third conclusion of law that the hours of work began after the completion of such preparatory activities and at the time the employees arrived at the collar or portal of the mine where they were required to report at a specified time.

tioners' brief, p. 30). We suggest that the opinion of the Circuit Court of Appeals is the best answer to this argument. The assertion is made (p. 29) that the Circuit Court held that "an employer could require its employees to report on the premises and undertake productive labors at any time, disregarding time clock cards entirely—and then pay said employees only for an arbitrary 'starting time,' which begins a considerable time after actual productive labors are undertaken." This is an obvious misstatement of the opinion and holding of the Circuit Court of Appeals.

We have discussed in detail, *supra* (pp. 18-22), the holdings of the District Court and the Circuit Court of Appeals as to what constituted working time, pointing out that the lower courts have been in agreement on this factual question and that it is not here involved.

The argument on p. 30 appears to be that the District Court had power to adopt an arbitrary formula. Petitioners refer to the suggestion of this Court in the *Tennessee Coal & Iron Company* case to the effect that the decision therein did not foreclose reasonable provisions of contract to govern the computation of work hours where precisely accurate computation is difficult or impossible. Assuming that an agreement may validly be made as to computation of working hours where precise computation is impossible, it does not follow that the judgment of the District Court may be affirmed. In this case there was a custom and agreement (as we have pointed out *supra*, pp. 31, 97) that hours of work should be computed in the method which the company had followed for many years, and which was sustained as accurate by the Circuit Court of Appeals. We submit that there is nothing in the prior decisions of this Court

which would authorize the District Courts, as petitioners would have them do, to write or re-write a contract for the parties to govern the computation of working hours.

3. REPLY TO ARGUMENT THAT PIECE WORKERS ARE COVERED BY THE FAIR LABOR STANDARDS ACT (pp. 32-34, Petitioners' Brief)

The respondent company, of course, has always taken the position that its employees engaged at piece rates should be paid overtime for any work week in which they worked more than the maximum straight-time hours; and the company has paid overtime to its employees who worked more than 40 hours a week. We have discussed this *supra*, p. 41.

H. CONCLUSION

The cause was fully tried, some twenty-three trial days having been devoted to an exhaustive inquiry which developed all the available facts that could be shown by either petitioners or respondent. It has been clearly demonstrated that the employees of respondent Company did not start production ahead of starting time; and it is equally clear that they cannot establish how much time they may have spent (after entering the plant and before starting production) in various preliminary activities preparatory to going to work; nor can they establish whether the time so spent came before or after the regular starting time. Furthermore, the record discloses no basis for setting aside the factual findings of the courts below, which found that under the particular circumstances here involved, working time did not include all the time spent by the employees in the plant, as reflected

by the time clock cards. These factual findings were in accordance with the general principles laid down in prior decisions of this Court, and in accordance with the commonly understood and generally accepted meaning of the statutory terms.

The concurrence of the lower courts in this finding of fact, and the demonstrated inaccuracy of the conjectural formula which was made an arbitrary basis of judgment in the District Court, and the settled requirements as to the respect which must be accorded the report of the Special Master, all make it clear that the judgment of the Circuit Court of Appeals should be affirmed, and the petitioners' action dismissed.

Respectfully submitted,

FRANK E. COOPER,
11th Floor, Ford Building,
Detroit 26, Michigan,

BERT V. NUNNELEY,
Mt. Clemens Savings Bank Building,
Mt. Clemens, Michigan,

Attorneys for Respondent.

BEAUMONT, SMITH & HARRIS,
Of Counsel.

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APPENDIX

1. Fair Labor Standards Act

The relevant provisions of the Fair Labor Standards Act (Act of June 25, 1938, 52 Stat. 1060, 29 U.S.C.A. Sec. 201-219) are as follows:

Sec. 6 (a) "Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 208 of this title, whichever is lower, and

(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 208 of this title."

(29 U.S.C.A. Sec. 206)

Sec. 7. (a) "No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section.

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

(29 U.S.C.A. Sec. 207)

Sec. 16 (b) "Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The Court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

(29 U.S.C.A. Sec. 216)

2. Walsh-Healey Public Contracts Act

The relevant provisions of the Walsh-Healey Public Contracts Act (Act of June 30, 1936, as amended, 49 Stat. 2036, 41 U.S.C.A. Secs. 35-46) are as follows:

> Sec. 1. "That in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States) for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount, exceeding $10,000, there shall be included the following representations and stipulations:
>
> • • •
>
> (c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week: Provided, That the provisions of this sub-section shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 and 2 of subsection (b) of Section 7 of an Act entitled 'Fair Labor Standards Act of 1938'."
>
> (41 U.S.C.A. Sec. 35)

By regulations promulgated under this Act, it is provided:

> "Employees engaged in or connected with the manufacture, fabrication, assembling, handling,

supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract may be employed in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, provided such persons shall be paid for any hours in excess of such limits the overtime rate of pay which has been set therefor by the Secretary of Labor.

"Until otherwise set by the Secretary of Labor the rate of pay for such overtime shall be one and one-half times the basic hourly rate or piece rate received by the employee."

(Article 103, Regulations prescribed by the Secretary of Labor under the Public Contracts Act.)

3. Federal Rules of Civil Procedure

The relevant provisions of Rule 52 (a) Federal Rules of Civil Procedure are as follows:

"In all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; * * * Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court."

The relevant provisions of Rule 53 (e) (2), Federal Rules of Civil Procedure, are as follows:

"In an action to be tried without a jury the Court shall accept the Master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report

any party may serve written objections thereto upon the other parties. Application to the Court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6 (d). The Court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions."

(28 U.S.C.A., following Sec. 723 (c))

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 342

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL No. 1083, UNITED POTTERY WORKERS OF AMERICA, affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

Petitioners,

vs.

MT. CLEMENS POTTERY COMPANY,

Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

RESPONDENT'S REPLY TO BRIEF OF WAGE AND HOUR DIVISION

FRANK E. COOPER,
11th Floor, Ford Building,
Detroit 26, Michigan,

BERT V. NUNNELEY,
Mt. Clemens Savings Bank Building,
Mt. Clemens, Michigan,
Attorneys for Respondent.

BEAUMONT, SMITH & HARRIS,
Of Counsel.

Eclipse Composition Co., 243 West Larned St., RA. 9586, Detroit

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In The

Supreme Court of the United States

October Term, 1945

No. 342

Steve Anderson, Earl Trombley, Lillian Socia, Albert Watkins, Arthur Sibbe, Nelson Luchtman, Rita Schulte, individually, for and in behalf of themselves and others similarly situated: and Local No. 1083, United Pottery Workers of America, affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

Petitioners,

vs.

Mt. Clemens Pottery Company,

Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

RESPONDENT'S REPLY TO BRIEF OF WAGE AND HOUR DIVISION

I. IN GENERAL

The brief filed on behalf of L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States

Department of Labor, as *Amicus Curiae*, does not discuss either of the two basic issues which govern the disposition of this case. The brief does not argue, as petitioners claim, that employees are entitled to be paid from the moment they punch the time clock; rather, the brief (p. 8, note 6), recognizing the fallaciousness of such a claim, admits that the Master and the District Court both ruled against such claim. The plaintiffs (petitioners) not having appealed from such ruling, that question is not before the Court. Neither does the brief argue that the judgment of the District Court may be upheld—in fact, the brief expressly disaffirms (footnote, p. 2) the expression of any opinion that the judgment of the District Court can be supported on the record. Obviously, the learned authors of the brief, noting that the overwhelming evidence supported the findings of the Master and the Circuit Court of Appeals and did not support the arbitrary formula adopted by the District Court, have decided to drop that phase of the case and attempt to get this Court to adopt a new and novel rule to the effect that no real evidence be required of the plaintiff in this class of case.

It is our view that this case turns almost entirely on "evaluation of the factual evidence in the record," and that as demonstrated in our principal brief the finding of the Master that there was no unpaid overtime work was fully sustained by an overwhelming weight of evidence, and the judgment of the Circuit Court of Appeals, in affirming such finding, should not be disturbed.

It is true that as set forth in *amicus curiae* brief, "no issue of general importance is presented" (p. 2, note 1). It is just a question of whether a plaintiff has sustained the burden of proof which is always his.

The brief does ask this Court: (1) to hold that time spent by employees in such activities as putting on overalls or work gloves must be deemed a part of working time and taken into consideration in computing hours worked; (2) to lay down a rule as to the degree or standard of proof to govern in employee actions under the Fair Labor Standards Act (Act of June 25, 1938, c. 676, 52 Stat. 1060, 29 U.S.C.A. sec. 201). But as we shall point out in detail, neither of these two questions need be decided in disposing of the instant case; and the long established principle, that points unnecessary to the decision in a case shall not be decided, should preclude consideration of these two issues. In fact, we submit, the record in the instant case does not adequately or properly furnish the necessary basis for an informed and careful consideration of these two points.

It should be noted, also, that the *amicus curiae* brief is based on the report of the Special Master and the opinion of the District Court. Apparently, the authors of the brief have not examined the remainder of the record herein; and consequently have based their argument in large part on certain assumptions of fact which the record shows to be unfounded. Further, we submit and shall hereinafter point out in detail, the argument in the *amicus curiae* brief rests on a misunderstanding and an erroneous construction of the holdings of the Master and District Court.

II. REPLY TO ARGUMENT THAT TIME SPENT IN PERSONAL ACTIVITIES BEFORE STARTING WORK MUST BE PAID FOR AS TIME WORKED

The *amicus curiae* brief characterizes as "preliminary *duties*" (p. 3) time spent in putting on aprons or overalls, removing shirts, etc. This description may be misleading. The more accurate phrase is "preliminary *activities*" (R. 201). The employees were under no duty to put on their overalls or change to their work shirts after arriving at the plant. The nature of the job did not require it. The employees were free to, and some did, put on their work clothes before coming to the plant. There was no requirement by the company that the employees wear any uniform or other particular kind of clothing; all were free to work in whatever apparel they desired; nor did the jobs or character of the work require any special clothing. This is significant in view of the announcement of the Wage Hour Division in 1942 that time spent by employees in changing clothes should be considered time worked only when they are required to change on the employer's premises (Release 1739, 5 W. H. Rep. 115; R. 200).

We are not here concerned with the argument that time spent in non-personal preliminary activities should be deemed working time. The Master did not rule otherwise (R. 200). The argument in the Wage Hour Division's brief must be directed solely to these personal activities; and when so considered, the argument amounts to a plain reversal of the prior announcements of the Division (many of which are reviewed at pp. 80-86 of our principal brief).

The argument of the *amicus curiae* brief starts out with the proposition that the Master assumed such personal activities were not compensable (p. 3). While the Master was inclined to the opinion (as the lower courts have since held) that time spent in these personal activities was not compensable, yet the Master specifically refrained from deciding this point (R. 200). The Master's findings as to this matter are fully reviewed in our principal brief (pp. 16, 17).

The *amicus curiae's* brief next argues that the Master made no finding as to the amount of time spent in personal activities before starting production work (p. 3). This is in error. The Master considered all preliminary activities of whatever nature—either personal or non-personal—as a single category (R. 169, 170). As to all such preliminary activities, he found (R. 201) that the time so spent varied widely with different departments, with different employees in the same department, and with the same employee on different days. The evidence did not permit a finding as to either any minimum figure or any average figure. There was no proof by the employees either of the amount of time spent in preliminary activities (of any nature) or of the proportion (if any) of it spent in advance of the regular starting time (R. 201). But if any of it was spent before starting time, it was counterbalanced by occasions when employees started work late and quit early (R. 191). It should be noted the employees did not claim that these personal activities took any measurable amount of time (See R. 646, ["I would have my shirt unbuttoned most of the time by the time I got to the job, and it is no matter to slide out of your shirt and slip your apron over your neck"]; R. 769-773, [18 or 22 seconds to put on finger cots, which the witness said she put on before reaching her place of work]).

In this connection it is again impliedly admitted by *amicus curiae* that the proof in the record does not warrant any recovery, when instead of claiming that the respondent owes the petitioners some money, which is the only question involved in this case, *amicus curiae* asks the Court to lay down a rule for future purposes (p. 4) regardless of the right of petitioners to any recovery.

The finding of the Master, approved by the District Court, unappealed from by the plaintiffs (petitioners herein), and affirmed by the Circuit Court of Appeals, was that the time taken in all preliminary activities could not be figured with any degree of reliability and was not shown to have resulted in any overtime (R. 201). Under the circumstances of this case, plaintiffs (petitioners) not having appealed, this question is not before the Court and the Division should seek some other vehicle for the promulgation of the new rule sought by it.

Most of the employees at respondent's plant were engaged at tasks which did not require any preliminary preparations whatsoever. Those who worked on the glost belt, for instance, had but to step to their posts; they were not required to wear any particular kind of clothing or use any equipment at all, and undeniably the large group so engaged could not possibly work until the belt started, which was not until the regular starting time.

The Wage Hour Division evidently recognizes, as did the Master and the District Court, the practical difficulty of keeping track of a few seconds which an employee may spend on some personal preparations, and (p. 7, note 5), has announced that it would not seek to enforce payment for time changing clothes if the time involved was not more than five minutes, even where employees were required to do so on the employer's premises; but

it asks the Court in this case to arbitrarily set up a rule which would require each employee to be accompanied by a stop watch operator so that if the employee pulled on his gloves before the whistle blew he could be paid for the seconds involved.

The third point in the Division's brief is that these activities bear all the indicia of work (p. 4). We have commented on this argument at pp. 88-91 of our principal brief. But whatever the Court might decide on this point, it would have no bearing on the unanswerable fact that the Master's decision was based squarely on the proposition that there was no proof of the amount of time so spent, although such time, if any, was obviously very, very limited in amount.

The fourth point in the brief of *amicus curiae* is that these personal activities were concededly done before starting time (p. 4). To this we cannot assent. There was much testimony that on every day many employees reached their departments after starting time and put on their overalls and gloves after the regular starting time (R. 989, 993, 1011, 1122, 1182, 1403). It should be remembered that most of the employees were engaged in group operations in which they could not possibly start work unless all members of the group were present, and nowhere in this record is there any proof or even evidence that all of any particular group ever arrived before starting time. The Master's finding was that, while employees who arrived early engaged in various personal activities before starting time, yet it was impossible to determine how much time was spent in making personal preparations for work (as distinguished from other personal activities); and impossible—considering as a unit the time spent in all preparing-for-work activities, whether

personal or non-personal preparations—to determine how much time was spent or what part of the time spent in such preliminary activities came before starting time (R. 201).

The fifth point is the assertion that the lower courts have held time so spent to be compensable (p. 5). The cases cited do not support any such conclusion. The first five cases cited are analyzed at page 156 of our principal brief. The other cases cited (including two under the Fair Labor Standards Act, five under the railroad employees' "Hours of Service Act," 34 Stat. 1416, and one under a State statute), do not require extensive comment. They relate to situations where an employee is required by his employer to report early, and is given certain duties to perform during a fixed period of time when he is required to remain on duty at a prescribed place. It specifically appears in most of the cases that the time in question was spent in physical work, such as oiling engines, stoking boilers, wetting down coke, etc. Certainly, no lower court decision has been cited that imposes any duty on the employer to hold a stop-watch on each employee who may slip on an apron, or put on canvas gloves, a moment before the whistle blows. Rather, the uniform trend of lower court decisions is in exactly the opposite direction. Many of them are analyzed at pp. 77-80, 91-95, of our principal brief.

The final point of *amicus curiae* in this portion of its brief is that the Wage Hour Division "has consistently taken the position that time spent in make-ready work" is compensable (p. 7). As indicated by the rather meager citations given, it has been the position of the Division that time spent in making machinery ready and time spent changing clothes (where the nature of the job or

the employer requires a change of clothing on the premises) is working time. But nothing of that sort is here involved. Here, the employees were free to dress for work at home and could wear whatever they chose. Under the ruling cited (Release 1739, 5 W.H.R. p. 115), this time is not deemed working time. Time spent making machinery or materials ready was deemed working time by respondent (R. 1178).

If the brief of *amicus curiae* had cited the administrative holdings pertinent to the factual situation here involved (as we think fairness and candor would require) it would be clear that the findings of the Master and the decision of the Circuit Court of Appeals herein are entirely in harmony with the interpretations of the Wage Hour Division. Such interpretations are collected at pp. 81-85 of our principal brief.

Summarizing respondent's position as to the first proposition argued in the brief of *amicus curiae*, we submit:

(1) The brief overlooks the controlling factual aspects of this case, as disclosed by the record. It overlooks, for example, the fact that the Wage Hour Division inspected respondent's plant during the period involved and made no criticism of respondent's time-keeping practices, but rather complimented respondent on the completeness with which its records were kept (R. 1157); and it overlooks many of the Master's findings and a great deal of the evidence.

(2) The point argued—that time spent in purely personal preliminary activities should be deemed hours worked—is not here involved because the controlling finding, and the basis of the decision below, is that there was no proof as to how much time was so spent, or whether it

time before or after starting time for particular employees on particular days. The petition does not raise the question which *amicus curiae* argues; and the question need not be answered in deciding this case. This case does not involve determining the meaning of the phrase "hours worked."

(3) The argument of *amicus curiae* is in effect that an employer must make sure that no employee ever puts on gloves or aprons, or washes his hands, or engages in other similar purely personal activities before starting time; or must devise some method of clocking the number of seconds so spent and pay the employee at premium rates therefor, if an employee ever does these things before the whistle blows. This argument is contrary to court decisions and prior administrative interpretations; it conflicts with uniform industrial practice; it goes beyond what labor claims; and it offends common sense.

III. REPLY TO ARGUMENT THAT THE CIRCUIT COURT OF APPEALS APPLIED AN ERRONEOUS STANDARD OF PROOF

The argument of the *amicus curiae* brief on its second point is premised on two misconceptions. First, it is asserted (p. 9) that the Master found that at least some preliminary work was performed in advance of the regular starting time, but that the evidence as to the precise amount of the time so spent was not sufficiently definite. Secondly, it is argued that the District Court did accept the Master's findings of fact, and differed with the Master only on a law question; and in this connection it is argued (p. 11) that the District Court's opinion should be construed as holding that employees started to perform "pre-

liminary duties" seven minutes after punching the time clock and that this time should be paid for.

But this does not correctly state the findings of the Master and misinterprets the opinion of the District Court.

It must be remembered that the Master's finding was: Actual production work did not start before starting time (R. 191). Assuming that all types of preliminary activities could be deemed to be work, there was no proof from which there could be determined the amount of time so spent, nor how much of it came before starting time (R. 201). In any event, the time so spent was trivial in amount and would be counter-balanced by occasions when employees started work late and quit early (R. 191).

The District Court did not in any way disagree with the Master's findings and conclusions on the matter of preliminary activities. In fact, the District Court went further than the Master and held that time spent in personal preparations for work should be excluded from the computation of hours worked. Its opinion held that time spent in such personal preparation and walking to the department should be considered together and excluded from working time (R. 242-244). The District Court's conclusion that time spent in purely personal activities is not a part of hours worked is revealed elsewhere in the record. See, e.g.: R. 396-397 (where the Court pointed out employees can't start work the minute they get there, and cited as an example the time spent in personal activities before starting work); R. 1494 (where the Court indicated employees could properly be expected to get there early enough to put on their overalls before starting time, because "they are supposed to be ready to work"); R. 1499 (where the Court insisted that an employee who

arrived early was not entitled to "go over and sit in the corner and draw pay"). We repeat, the holding of the District Court was based solely on its assumption that if the employees had completed all personal preparatory activities and were "ready to work" (R. 242) at 5 or 7 minutes before starting time, they must undoubtedly have started actual production work 5 or 7 minutes ahead of starting time. It was only this assumed actual production work for which the District Court allowed recovery. This was the only point at which the District Court refused to accept the Master's findings. The Master found specifically that production work did not start before starting time (R. 191); but the District Court held production work should be assumed to have started 7 minutes after the employee punched the time clock (R. 242-244).

The brief of *amicus curiae* does not argue in support of this finding of the District Court, nor argue that the Circuit Court of Appeals erred in holding that the finding of fact by the Master was binding on the District Court. Therefore, we must go back to the Master's findings (as stated in detail at pp. 15-18 of our principal brief and summarized in the next to the last preceding paragraph herein) in considering the argument of *amicus curiae*, who contends that on these findings some recovery might be allowable.

It is noteworthy that the *amicus curiae* brief does not concern itself with the question of the "right or extent" of recovery (p. 4). But this, of course, is the whole case. On these findings of the Master, what recovery could be allowed? There was no proof of the time spent in preliminary activities. There was no proof as to how much of it came before starting time. There was proof that no substantial amount of time was so spent; and that if any of it did come before starting time this was counter-

balanced by occasions when employees started late and quit early. There can be no question but that on these findings, the claims must be dismissed, whatever standard of proof is followed.

The argument at page 10 involves a misunderstanding of the Master's report. The quotation (p. 10) from R. 179 is lifted from the middle of a discussion by the Master as to what proof would be required to support the claim "that all time between punched entries on cards was working time" (R. 179), and the quotation (p. 10) from R. 191 was likewise lifted from a discussion of the same subject.

It must be remembered that all through the trial of this case the petitioners claimed they should be paid for all the time between the punched entries on the clock cards; and the quotations referred to were made in discussing the problem so presented.

In view of the decisions of both the lower Courts—not challenged by *amicus curiae*—that they were not entitled to be paid on this basis, this statement is immaterial. It does not reflect, as *amicus curiae* seems to think, the standard of proof followed by the Master.

There can be no question—and *amicus curiae* does not deny it—that the burden is on the employees to prove that some overtime was worked. But in this case the employees did not prove this. The brief of *amicus curiae* overlooks this, and cites cases holding that where the *fact* of damage is proved, uncertainty as to the precise *amount* of damages does not necessarily prevent recovery. But these cases are not in point. Here, there was no proof as to the *fact* of damage, because it was determined by the Master that no overtime was worked.

It is clear that there must be certainty as to the fact of damage. As to this, indeed, it is enough to refer to the cases cited by *amicus curiae*. As the Court said in *Palmer v. Connecticut Ry. Company*, 311 U.S. 544, 561 (quoted at page 13 of the brief of *amicus curiae*),

> "Certainty in the fact of damage is essential. Certainty as to the amount goes no further than to require a basis for a reasoned conclusion."

The same point is made in *Story Parchment Company v. Paterson Co.*, 282 U.S. 555, 562, quoted at p. 13 of the brief of *amicus curiae*. There can be no doubt but that in such a case as this there is no cause of action (i.e., the fact of damage has not been established) unless overtime has in fact been worked. This is discussed at p. 128 of our principal brief. We do not understand that this is denied by the brief of *amicus curiae*. Rather, his argument assumes that in this case there was proof of some overtime worked, and that the only uncertainty was as to the amount. The findings of the Master are not susceptible of this interpretation. The findings were that there was no overtime worked. The fact of damage had not been proved. The question as to the amount of damages was not reached.

Amicus curiae argues that the trial Court did not disagree with the Master's finding of fact (p. 12), but only disagreed as to the amount of proof required. Actually, as found by the Circuit Court of Appeals (R. 1594), the trial Court disregarded the findings of the Special Master and "applied an arbitrary formula, set up in its labeled 'Findings of Fact'." Nowhere in the trial Court's findings or opinions is there any reference to any "standard of proof" or to the question of "quantum of proof,"

except his statement at a hearing on a motion for findings, September 13, 1943, to counsel for petitioners:

> "You told me you were going to do a lot of things, and I said if that is so, I would give them something they would wish they had never got. You didn't prove it, and it isn't my fault.
>
> "What else have you got?
>
> "Mr. Lamb: Your Honor, may I be heard on this now?
>
> "The Court: Not now. I have listened to this case for two years.
>
> "Mr. Lamb: I have worked on it three years.
>
> "The Court: I go out of my way to try to give you a little time, on testimony that wasn't worth a continental. * * *" (R. 1506.)

Does the Supreme Court want to lay down a rule that judgment in this case should be based on such testimony?

The *amicus curiae* doubts this, for on page 12 of his brief he again indicates that the judgment of the Circuit Court of Appeals should be affirmed, where he expresses doubt if the "particular formula adopted by the District Court can be sustained."

The only thing this respondent is interested in is that it shall not be unjustly convicted of failure to pay its employees what was due them, and be required to pay a sum of money which it does not owe.

The brief of *amicus curiae* also strays from the record in this case, we submit, in arguing (p. 14 et seq.) that here the responsibility for the deficiencies in the evidence is attributable to respondent's unlawful conduct in not keeping records. The brief assumes that the respondent did not keep accurate records of the hours worked by the employees.

But in fact, the records were not only accurately kept but kept in such a manner that every employee had before him the very next day the amount of time he was credited with working the preceding day, thereby putting each employee in a position each day to have errors, if any, corrected. No more accurate system for keeping records of this character could be devised, and neither at the time of the inspection, when, in fact, the Wage Hour Division representative complimented the company on its records (R. 1157), nor in the brief of *amicus curiae*, is our attention called to any inaccuracy or incompleteness of such records, nor are we given any indication of how such records are improper or illegally kept.

We fear the authors of the *amicus curiae* brief did not examine the evidence to learn what records as to working time were kept by respondent. Respondent in fact kept records of hours worked which were far more complete and more accurate than those of most employers. The recordkeeping system is described at R. 1150 et seq., and illustrated by Ex. 80 (R. 1150, 1300, reproduced at R. 1544). The Company made a daily entry on each employee's time clock card showing the number of hours he was credited with having worked each preceding day of the workweek. Thus, every day when an employee picked up his time clock card he knew exactly what hours of work the Company had figured. The testimony of all employees and former employees who were asked about this was uniformly to the effect that all the employees understood the recordkeeping system. As noted by the Master (R. 190), none of them at any time protested that the system was inaccurate, although they felt free to complain about such matters. One of petitioners testified that it had never occurred to him that he was working more time than the Company's computations showed (R. 651). And another witness, when asked what the figures on the righthand side of the time clock cards (e.g., Ex. 80) indi-

cated, replied that those were the hours she worked (R. 862).

The computation of hours worked, as originally noted daily on the time clock cards, was subsequently transferred to the Company's payroll records (e.g., Ex. 80-A). As we have discussed in detail in our principal brief, respondent's records were kept with great particularity, and the basis for computing hours worked is the same basis as employed in other factories all over the country. Both the Master and the Circuit Court of Appeals believed that the records were in all respects proper and accurate. Certainly they cannot be said to be inaccurate unless there is some proof that some employees worked longer hours than the records showed. But there is no such proof. The statement of *amicus curiae* that the company's records were improperly kept and that this is the reason why petitioners could not prove their case, is utterly without foundation in the record. May we suggest that a rule such as is requested of this Court by the Wage Hour Division would place all employers completely at the mercy of any disgruntled employee who chose to make a claim. There is absolutely no testimony in this case that the records were improperly kept or inaccurate.

Amicus curiae suggests that the burden of proof should be shifted to the employer "once the employee has established the fact that he performed some work for which his employer did not credit or pay him" (p. 15). Here again he overlooks the fact that the findings are that none of the employees had established that he had performed any work for which he was not credited and paid.

The brief cites many decisions of the lower Federal Courts on the question of the necessity of employees proving that they worked overtime if they are to recover. Many of the same cases are summarized at pages 124-134

of respondent's principal brief. There can be no doubt but that under all these cases the employees have the burden of showing that they worked overtime, and their evidence must afford at least some reasonable basis for determining how much overtime was worked.

It is significant that in spite of the fact that each employee knew each day the exact number of hours' work with which he was credited by the company, no employee ever objected to such computation or kept any account of any excess time worked, although such an account could easily have been kept by the individual employee had there been any excess time to keep account of.

Amicus curiae (pp. 16, 17) cites four cases said to adopt "rather flexible" or "less stringent" standards of proof. But the rule under these decisions is the same. In *Johnson v. Dierks Lumber & Coal Company* (C.C.A. 8, 1942), 130 F. (2d) 115, 118, the Court said (citing many cases):

> ". . . the burden is upon the plaintiff to establish by a preponderance of the evidence the number of hours worked and the amount of wages due; and the evidence to sustain this burden must be definite and certain."

Similarly in *George Lawley & Son Corporation v. South* (C.C.A. 1, 1944), 140 F. (2d) 439, the Court declared that plaintiff must produce evidence definite enough to permit a finding without resort to guess or conjecture that he worked some particular number of overtime hours. Almost the same language is found in *Joseph v. Ray* (C. C.A. 10, 1943), 139 F. (2d) 409. In *De Pasquale v. Williams-Bauer Corporation, et al.* (C.C.A. 2, 1945), 8 W. H. Rep. 1104, each plaintiff testified to the total number of hours he worked each week, and this burden of proof was met.

The brief of *amicus curiae* criticizes this uniform trend of the Courts, but we respectfully suggest that the question as to the requirements of proof in court actions is not one on which administrative inclinations are particularly persuasive. This, rather, is a question of law within the particular competence of the Courts.

In summary, respondent's reply to the second point urged by *amicus curiae* is:

(1) His argument is based upon a misunderstanding of the Master's findings.

(2) The argument is essentially that where it is clear that some overtime was worked employees should not be required to prove precisely how much. But it is conceded, we think, and must be, that there must be definite and certain proof that some overtime was worked; and here there was no proof or finding that any overtime was worked; in fact, the finding was that no overtime was worked.

(3) The argument that an employer who fails to keep accurate records should be penalized by being required to prove that employees did not work overtime is in conflict with the decisions of the lower Federal Courts. Further, such argument is in any event entirely inapplicable here because in this case the respondent kept full and accurate records and was indeed complimented by the Wage Hour Division on the completeness with which its records were kept.

(4) The argument is, of course, addressed to the findings of fact as made by the Master and confirmed by the Circuit Court of Appeals. We respectfully submit that on these findings, no matter what measure of proof might be devised, the only possible result would be the dismissal of the claims, as ordered by the Circuit Court of Appeals.

IV. CONCLUSION

We submit the brief of *amicus curiae* disregards the controlling facts established by the record in this case. It disavows any "evaluation of the factual evidence in the record" because this presents "no issue of general importance" (p. 2). But this case is one which must be decided on that very basis. The brief does not touch the central issue presented: whether, under the findings of the Master, the arbitrary formula devised by the District Court as a basis of judgment, may stand. Instead, the Administrator (who did not appear in any capacity in the lower Courts, and is hence unfamiliar with the evidentiary facts of the record) chooses to argue two points which need not be decided in disposing of this case and which we believe cannot fairly be said to be presented by the petition herein, or on this record.

We believe the brief of *amicus curiae* does not present any persuasive reasons for modifying the judgment of the Circuit Court of Appeals, and we pray that the judgment of that Court be affirmed.

Respectfully submitted,

FRANK E. COOPER,
11th Floor, Ford Building,
Detroit 26, Michigan,

BERT V. NUNNELEY,
Mt. Clemens Savings Bank Building,
Mt. Clemens, Michigan,
Attorneys for Respondent.

BEAUMONT, SMITH & HARRIS,
Of Counsel.

January, 1946.

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 342

STEVE ANDERSON, ET AL., PETITIONERS

v.

MT. CLEMENS POTTERY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, AS AMICUS CURIAE

This brief is primarily concerned with the following issues raised by the petition: (1) whether time spent in certain preliminary duties preparatory to productive work constitutes employment or working time compensable under the Fair Labor Standards Act; and (2) whether the master and the circuit court of appeals applied a correct standard of proof in ruling that petitioners had not sustained their burden of proof of the amount of overtime worked.

It is the Administrator's view (1) that the time spent in preliminary duties, including both duties characterized by the master as "personal" and those characterized as "non-personal," constitute employment within the meaning of the Act; and (2) that the standard of proof applied by the master and by the court of appeals requires a degree of certainty not justified by the nature of the problem and inconsistent with the objectives of the Fair Labor Standards Act and the efficacy of the remedy provided by Section 16 (b) of the Act.[1] The amount of time involved per day in activities such as are here involved is, of course, small, and seldom accurately recorded. But this is not a reason for excusing the employer from paying for services performed on his behalf.

I

TIME SPENT IN PERFORMING NECESSARY PRELIMINARY SERVICES CONSTITUTES WORKING TIME

There seems to be no disagreement between the master and the district court that some preliminary work was performed by employees prior to the established starting time. The master found that the employees "were instructed to be, and generally were, in their departments, ready

[1] Insofar as the determination of the case turns upon an evaluation of the factual evidence in the record, no issue of general importance is presented, and therefore no opinion is expressed on the question whether or not the district courts' judgment is supported by the evidence.

to work and with personal preliminary duties performed, by the established starting time" (Fdg. 5, R. 215). The master distinguished between "personal" and "non-personal" duties, characterizing as "personal" duties "putting on aprons or overalls, removing shirts, taping or greasing arms, putting on finger cots," and characterizing as "non-personal" duties "preparation of equipment for commencement of production work, such as turning of switches for lights and machinery, opening windows and assembling and sharpening tools" (R. 169). Apparently, the master made this distinction on the supposition that the so-called "personal" duties were not compensable employment. In any event, he made no conclusion of law that such duties were compensable, and made no finding of fact as to the amount of time consumed in performing them. Although the master appears to have assumed that time spent in "non-personal" duties was compensable, he made no affirmative finding with respect to the performance of "non-personal" duties during the time in question. As indicated below, he decided it was unnecessary to make a finding because of his conclusion that the employees had not sustained their burden of proof of the extent of such work. See *infra*, Point II.

It is the Administrator's view that both the "personal" and "non-personal" duties constitute employment compensable under the Act, and that there should be a clear decision on this

point for future purposes regardless of the right or extent of recovery allowed petitioners on the basis of the proof in this record.

The preliminary duties, both "personal" and "non-personal," bear all the indicia of "work" or "employment" declared to be the "basic elements" of work covered by the Act in *Tennessee Coal, Iron & R. R. Co.* v. *Muscoda Local,* 321 U. S. 590, 597, and *Jewell Ridge Coal Corp.* v. *Local No. 6167, United Mine Workers of America,* 325 U. S. 161. They involve "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business" (321 U. S. at 598). The duties are performed on the employer's premises and are performed "only because [they are] a necessary prerequisite" to productive work. See *Jewell Ridge* opinion, p. 166.

The master apparently recognized, by his characterization as "non-personal," that the preparation of equipment for productive operations, the gathering and sharpening of tools, the turning on of switches are not undertaken primarily for the convenience of the employees and that they bear no relation to employees' personal needs. The work which the master characterized as "personal"—putting on aprons or overalls, removing shirts, taping or greasing arms, putting on finger cots (R. 169)—which was concededly done before

the starting time (R. 174, 191; Fdg. 5, R. 215), was no less "primarily for the benefit of the employer and his business."

Although this Court has not had occasion to rule explicitly on the question whether preliminary or "make-ready" duties are compensable under the Act, the lower court decisions, with the single exception of that of the Fifth Circuit in the *Tennessee Coal & Iron* case,[2] have uniformly held that time spent in such duties is working time within the scope of the Act. Thus, employees engaged in such necessary preparatory activities as cleaning and oiling machines (*Walling* v. *Frank*, 62 F. Supp. 261 (W. D. Ky.); *Walling* v. *Blue Mt. Logging Co.*, 6 Labor Cas., par. 61,466 (W. D. Wash., 1942)), changing clothes

[2] 135 F. 2d 320, 323, where time spent by employees in procuring and returning tools, lamps and carbide at the surface of the mine was held not to be working time. While the Administrator considered this ruling erroneous, and so stated in his brief in this Court (No. 409, October Term, 1943, br., p. 40), no cross petition was filed because the issue was not deemed of sufficient importance as compared with the travel time issue in that case. The district court held that such activities "are obviously work" pointing out that: "They are performed on the premises of the employer, in the furtherance of the employer's business, with no benefit to the employees (except to aid him in the performance of work for the employer), under conditions created and controlled by the employer, and they involve responsibility to the employer and physical exertion, even though not burdensome, on the part of the employee. No characteristic of work is lacking. This time must be included in the workweek of the employees represented by the defendants" (40 F. Supp. 4, at 9).

at the beginning of a shift (*Ulle* v. *Diamond Alkali Co.*, 8 Wage Hour Rept. 1042 (N. D. Ohio, 1945); *Albert* v. *Porter*, 10 Labor Cas., par. 62,809 (N. D. Ill., 1945)), receiving instructions, orders and assignments and preparation therefor (*Edmondson* v. *Yellow Truck & Coach Co.*, 8 Wage Hour Rept. 187 (E. D. Mich., 1945)), have been held to be engaged in work compensable under the Act. See also *Walling* v. *Bonifas-Gorman Lumber Co.*, 7 Wage Hour Rept. 1039 (W. D. Mich., 1944) and *Philpott* v. *Standard Oil Co.*, 53 F. Supp. 833 (N. D. Ohio), holding that time spent by employees of an oil company engaged as "still cleaners" in preliminary activities prior to time the employees were checked in by the paymaster constituted working time within the meaning of the Act.[5] The decisions of the courts interpreting other statutes also have been uniform in holding time spent in comparable "make-ready" activities is working time. *Davies* v. *City of Seattle*, 67 Wash. 532, 121 Pac. 987; *United States* v. *Denver*

[5] In addition to the preparatory activities of the nature here in question which have been recognized as constituting worktime within the meaning of the Act, other preliminary activities such as waiting for work, or standing by on call, or travel, which are necessary and incident to the employment, similarly have been held to be employment within the scope of the Act. *Travis* v. *Ray*, 41 F. Supp. 6 (W. D. Ky.); *Walling* v. *Dunbar Transfer & Storage, Inc.*, 6 Wage Hour Rept. 476 (W. D. Tenn., 1943); *Walling* v. *Sun Pub. Co.*, 47 F. Supp. 180, 191 (W. D. Tenn); *Fleming* v. *North Georgia Mfg. Co.*, 33 F. Supp. 1005 (N. D. Ga.); *Walling* v. *Allied Messenger Service*, 47 F. Supp. 773 (S. D. N. Y.).

& R. G. R. R. Co., 197 Fed. 629 (D. N. Mex.); *United States* v. *Illinois Cent. R. R. Co.*, 180 Fed. 630 (N. D. Iowa); *San Pedro, L. A. & S. L. R. R. Co.* v. *United States*, 213 Fed. 326, 329 (C. C. A. 8); *United States* v. *Chicago M. & P. S. Ry. Co.*, 195 Fed. 783 (W. D. Wash.).

The Administrator has consistently taken the position that time spent in make-ready work performed on the employer's premises is working time compensable under the Act, and has so advised numerous employer associations and labor unions in various industries where the question has arisen.[4] This view has been expressed not only with respect to activities of the kind characterized by the master as "non-personal," but also with respect to so-called "personal" duties, such as changing of clothes (Press Release R-1739).[5]

In preparing themselves and their machines, equipment, and tools for the work of the shift, the employees do more than "stand and wait." *Missouri K. & T. Ry. Co.* v. *United States*, 231 U. S.

[4] Representative letters are printed in the Appendix, *infra*, pp. 19–21.

[5] However, because of the practical difficulty of determining the precise amount of time consumed in changing clothes, the Administrator has announced that he would not seek to enforce payment for clothes changing time if not more than five minutes was involved (Press Release R-1739). Where the employee is free to change into and out of his work clothes at home, time spent in changing clothes is not regarded as working time by the Administrator (*Ibid.*).

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112, 119. These preparations are just as much part of their employment, and just as necessary to the business of their employer, as is the underground travel time of iron and coal miners (*Tennessee Coal, Iron & R. R. Co.* and *Jewell Ridge* cases, *supra*), and the "waiting time" of fire guards subject to call on their employer's premises (*Armour & Co.* v. *Wantock*, 323 U. S. 126), and the duties of a night watchman when the plants are closed (*Walton* v. *Southern Package Corp.*, 320 U. S. 540). As an essential and integral part of the employment, the preliminary duties here must, under the statute, be included in the employees' compensable workweek.[8]

II

THE STANDARD OF PROOF

While ordinarily the question of adequacy of proof in a particular employee suit would have no

[8] The petitioners contend that they were also entitled to recovery for time spent in punching the time clock and walking from the clock to their work benches. The district court agreed with the matter that the time so spent should not be included as working time. In view of the special problems created by wartime plant protection requirements, the Administrator announced in June, 1941, that he would not consider as working time time spent traveling from fences, walls or other anti-sabotage barriers to working places, except where employees, like guards, are required to change into uniform and start performing duties immediately upon arrival at such barriers. (See Press Release R-1448.) There has been no announcement by the Administrator with respect to such time under normal peacetime operations.

general significance in the administration of the Act, the standard of proof which the master imposed on the employees, and which the circuit court of appeals confirmed, may so substantially impair the efficacy of the Section 16 (b) remedy as seriously to affect the administration and enforcement of the Act generally. We submit that the strict standard of proof applied by the master and the circuit court of appeals should not be sustained.

The petitioners claim (R. 10) that all of the time shown on their time cards was working time compensable under the Act, and that they received no credit for time worked in advance of or after the company's official starting and ending time. Respondent's contention is that petitioners did not begin work until the established starting time and that none of its employees were permitted to work prior to such time or after the established working periods (R. 108–109). The district court, with the consent of all the parties, referred the cause to a special master to take testimony with respect thereto and to report his findings of fact and conclusions of law thereon to the court (R. 139–140).

Although the master found that at least some preliminary work was performed in advance of the official starting time, he was apparently of the view that the evidence was not sufficiently precise with respect to the amount of time peti-

tioners spent in such duties to sustain plaintiff's burden of proof. In appraising the evidence, the master assumed that the employees' "claim depends upon a finding that the employees were required to go to their departments prior to the established starting time and to start to work at once, spending *all* of such advance time in work for the company * * *" (R. 179; italics added). In order to sustain their burden of proof, according to the master, petitioners were required to prove "that *all* the time between the punched entries on the clock was spent in working and that conversely *none* of the time in advance of the starting time spent by employees arriving early was their own time" (R. 191; italics added). "A computation of overtime on the basis of a finding that the employees worked more than the time credited to them but less than the time shown by the entries on the cards, would on this record be speculative," said the master, since the employees "kept no record of their time, and * * * admitted that apart from the time clock cards they could not tell on any particular day when they arrived at their departments or commenced preliminary work" (R. 201).

Disagreeing with the master's conception of the burden of proof and with his conclusion as to the sufficiency of the evidence, the district court found that the proof adduced sufficiently established that employees had worked all of the time

shown on their time cards with the exception of time it took the crew to punch the time clock and to walk from the clock to their work benches. The district court concluded that a reasonably accurate estimate of the time spent in preliminary duties and productive work could be made on the basis of the time cards, together with the evidence on the nature of the operations and on the pattern of behavior of the company foremen, without necessity of specific proof of the precise time so spent by individual employees on particular days (R. 241–244). It ordered that computation of the time worked be made on the basis of the time punched on the individual time cards, less seven minutes at the beginning of work in the morning and five minutes after the lunch period (Fdg. 3, R. 272–273; Judgment, par. 2, R. 297–298).

The circuit court of appeals reversed the district court on the ground that the district court was obliged to accept the master's findings of fact unless clearly erroneous, that the findings of fact were all supported by substantial evidence and were not clearly erroneous, and that the master correctly held that the employees had not sustained the burden of proof "to show by evidence, not resting upon conjecture, the extent of overtime worked" (R. 1594–1596).

The court of appeals seems to have been of the opinion that the district court, sitting as reviewing court, had no authority to review the

master's conclusions as to the sufficiency of the proof. As we view the trial court's action, it did not reverse or disregard the master's findings insofar as the findings were restricted to the facts. The trial court's disagreement with the master related to the requisite standard of proof, and to the question "whether the quantum of proof produced forms an adequate basis for a reasoned judgment." See *Palmer* v. *Connecticut Ry. Co.*, 311 U. S. 544, 558. This question, it seems, is appropriately one for determination by the trial court in its capacity as a reviewing court (*ibid.*).

Whether or not the particular formula adopted by the district court can be sustained, we submit that the trial court correctly concluded that the standard of proof imposed by the master was too strict and would only encourage employers to evade the Act and deny employees the protection intended by Congress.

Even in cases where the public interest in recovery is not as great as that involved in legislation designed to raise substandard wages, the standard of proof required has been much less stringent than that which the master and the court of appeals here would impose. As this Court stated in connection with a somewhat comparable problem of proof, in the case of *Palmer* v. *Connecticut Ry. Co.*, *supra*, at 560–561):

> The injured party is not to be barred from a fair recovery by impossible re-

> quirements. The wrongdoer should not be mulcted, neither should he be permitted to escape under cover of a demand for non-existent certainty. * * *
>
> Certainty in the fact of damage is essential. Certainty as to the amount goes no further than to require a basis for a reasoned conclusion. * * *

The master and the circuit court of appeals appear to have felt that the same degree of certainty of proof was required with respect to the amount of damages as of the fact of damages. But "there is a clear distinction between the measure of proof necessary to establish the fact that petitioner had sustained some damage, and the measure of proof necessary to enable the jury to fix the amount." See *Story Parchment Co.* v. *Paterson Co.*, 282 U. S. 555, 562. "Difficulty of ascertainment is no longer confused with right of recovery" (*ibid.*, p. 566, quoting from *Straus* v. *Victor Talking Machine Co.*, 297 Fed. 791, 802 (C. C. A. 2)).

In other situations where damages are difficult of proof and "to require proof * * * approaching mathematical certitude would bar a recovery for an actual injury suffered" (*Palmer* v. *Connecticut Ry. Co., supra,* at 559), this Court has agreed that: "Damages are not rendered uncertain because they cannot be calculated with absolute exactness. It is sufficient if a reasonable basis of computation is afforded, *although the result be only approximate*" [Italics supplied].

See *Eastman Kodak Co.* v. *Southern Photo Co.*, 273 U. S. 359, 379; *Palmer* v. *Connecticut Ry. Co.*, 311 U. S. 544, 560. "What is required is not mathematical exactness but only a reasonable approximation" (*Sheldon* v. *Metro-Goldwyn Corp.*, 309 U. S. 390, 408; *Palmer* v. *Connecticut Ry. Co., supra,* at 561).

While the above cited decisions deal with damage claims where the evidence is necessarily speculative, considerations of public policy would seem to justify application of the same standards of proof in employee suits under Section 16 (b). There is particular reason for not requiring too exacting a standard of proof in actions where the responsibility for the deficiencies in the evidence is attributable to defendant's unlawful conduct. See *Story Parchment Co.* v. *Paterson Co., supra,* at 562; *Hetzel* v. *Baltimore & Ohio R. R. Co.*, 169 U. S. 26, 39. See also *F. W. Woolworth Co.* v. *National Labor Relations Board,* 121 F. (2d) 658, 663 (C. C. A. 2). Such is the situation here. Section 11 (c) of the Fair Labor Standards Act imposes upon the employer the duty of keeping accurate records of the hours worked by his employees. This duty obviously is fundamental to the enforcement of the Act. Where the employer has not complied with this duty, "the risk of the uncertainty should be thrown upon the wrongdoer instead of upon the injured party." See *Story Parchment* decision at 563. "It would be a perversion of fundamental principles of justice

to deny all relief to the injured person and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate." *Ibid.*

There is indeed sound basis for the view that the burden of proof should be shifted to the employer in these employee suits, once the employee has established the fact that he performed some work for which his employer did not credit or pay him. See Note, 43 Col. L. Rev. 355, commenting on the difficulty of proof in actions under Section 16 (b). Pointing out that "there is little possibility of dispute about the facts where the employer has performed [his statutory] duty" to keep adequate records (*id.* at 355–356), the Columbia Law Review note suggests that "the problems would be largely eliminated and the policy of the Fair Labor Standards Act furthered, if the courts used their inherent equitable powers to draw from the refusal to keep records, consequences similar to those explicitly drawn, by the Federal Rules of Civil Procedure, from the refusal to produce them. [Rule 37 (b) (2)]. Among other measures, courts could place upon the employer either the burden of proof or the burden of coming forward with the evidence."

43 Col. L. Rev. at 358. As the note observes, "Where the employer has complied with Section 11 (c), this shift would not inconvenience him, while if he has not complied, he cannot be heard to complain since, having failed to conform to his statutory duty, he is responsible for the unsatisfactory nature of his proof" (*id.* at 359).

Even if it be assumed that the employer's failure to comply with his statutory duty does not shift the burden of proof (see *Wilkinson* v. *Noland Co.*, 40 F. Supp. 1009 (E. D. Va.); *La-Vann* v. *J. B. Kaufman Co.*, 7 Wage Hour Rept. 790 (E. D. N. Y., 1944); *Cintron* v. *Bull Insular Lines*, 7 Wage Hour Rept. 1062 (D. P. R., 1944)), at least the "lack of records [should] not preclude them [employees] from obtaining the protection which the statute affords to employees." *DePasquale* v. *Williams-Bauer Corp.*, 8 Wage Hour Rept. 1104, 1105 (C. C. A. 2, 1945). And, where it is established that some overtime was worked, "plaintiff's testimony should not be labeled indefinite and uncertain for the reason only that it supports a claim for more than the preponderance of the evidence may show him to be entitled to recover." See *Johnson* v. *Dierks Lumber & Coal Co.*, 130 F. (2d) 115, 119 (C. C. A. 8).[1]

[1] While the Second and Eighth Circuits in the *DePasquale* and *Dierks* cases seem to adopt a rather flexible standard of proof for the protection of the employee, most of the decisions of the lower courts under the Fair Labor Standards Act show considerable confusion on the question of proof, and have gone far toward rendering the Section 16 (b) rem-

We believe that the exacting standard of proof applied by the master and the circuit court of appeals offends the purposes of the Act and per-

edy ineffectual. See 43 Col. L. Rev. 355; *Jax Beer Co.* v. *Redfern*, 124 F. (2d) 172 (C. C. A. 5); *Gale* v. *Union Bag & Paper Corp.*, 116 F. (2d) 27 (C. C. A. 5). See also *Wilkinson* v. *Noland Co.*, 40 F. Supp. 1009 (E. D. Va.), where the court stated that it was convinced that the plaintiff performed some overtime work for which he was not paid, but denied recovery because of his failure to prove how much time was so spent; *Epps* v. *Weathers*, 49 F. Supp. 2 (S. D. Ga.), where the court said that even if the employer conceded that the plaintiffs worked an average of 45 to 50 hours a week, the court could not consider this as evidence because the circuit court of appeals, in the *Jax Beer* case, *supra*, had rejected the "average hours" basis; *Mayes* v. *Sewell Hats, Ltd.*, 46 F. Supp. 338 (N. D. Ga.), upholding a charge to the jury that no recovery could be allowed, "unless you determine from the evidence that in each and every week of the period of time for which over-time compensation is claimed by each of the plaintiffs, such plaintiff worked at least the minimum number of hours contended for * * *." See also *In re Interstate Magazine Hauling Corp.*, 55 F. Supp. 880 (S. D. N. Y.); *Griswold* v. *Rosenstock*, 8 Wage Hours Rept. 1039 (S. D. N. Y., 1945); *Belt* v. *Hodges*, 4 Wage Hour Rept. 423 (N. D. Tex., 1941).

For decisions under the Act applying a somewhat less stringent standard of proof, see *Joseph* v. *Ray*, 139 F. (2d) 409 (C. C. A. 10), and *George Lawley & Son Corp.* v. *South*, 140 F. (2d) 439 (C. C. A. 1), which affirm judgments not based on precise evidence, but like the Eighth Circuit in the *Dierks Lumber* case, *supra*, indicate confusion as to the appropriate standard of proof to be applied; see also *Mabee* v. *White Plains Pub. Co.*, 58 N. E. (2d) 520 (Sup. Ct. N. Y.), reversed on other grounds, 293 N. Y. 781 (Ct. of App. N. Y.), pending No. 57, October Term, 1945; *LaVann* v. *J. B. Kaufman Co.*, 7 Wage Hour Rept. 790 (E. D. N. Y., 1944); *Wagner* v. *American Service Co.*, 58 F. Supp. 32 (S. D. Iowa); *Whigham* v. *Tucker Oil Co.*, 4 Wage Hour Rept. 274 (N. D. Tex., 1941).

mits employers to benefit from their own misconduct. To avoid the manifest injustice of permitting an employer to profit from his failure to keep adequate records and to prevent the Section 16 (b) remedy from becoming ineffectual, what should be required of the employees in proving their claims "is not mathematical exactness but only a reasonable approximation." See *Sheldon* v. *Metro-Goldwyn Corp., supra,* 309 U. S. at 409.

Respectfully submitted,

J. HOWARD MCGRATH,
Solicitor General.

WILLIAM S. TYSON,
Acting Solicitor.

BESSIE MARGOLIN,
Assistant Solicitor.

DAVID O. WALTER,
EUGENE GREEN,
Attorneys,
United States Department of Labor.

JANUARY 1946.

APPENDIX

JULY 18, 1941.

Mr. R. D. MAGILL,
Glass Container Ind. Labor Comm.,
19 West 44th Street,
New York City, New York.

DEAR MR. MAGILL: This will reply to your letter of June 10, in which you state that you were notified of a "decision rendered by the Wage and Hour Division in which it was decreed that time spent at fixing up preparatory to the regular work starting time is considered time worked".

This is to advise you that the Wage and Hour Division has taken the position in recent inspections of the glass manufacturing industry that "getting ready" time under the Fair Labor Standards Act is working time and, therefore, contributory to overtime, as is any other working time.

Sincerely yours,

For the Administrator,
By JAMES G. JOHNSON,
Assistant to the Administrator.

AD:JGJ:AEC

JUNE 29, 1940.

Mr. H. H. COOK, *Acting President,*
American Flint Glass Workers Union,
Hardee Building, Corner Huron Street and Jefferson Avenue, Toledo, Ohio.

DEAR MR. COOK: It appears that in the glass manufacturing industry there are certain work-

ers known as "'hot metal" workers who report about thirty minutes early for a "get ready" period to prepare their materials for the day's work. We are advised that union agreements are in existence which provide that such period shall not be considered hours worked.

This is to advise you that the Wage and Hour Division has taken the position in recent inspections of the glass manufacturing industry that "get ready" time under the Fair Labor Standards Act is working time and, therefore, contributory to overtime, as is any other working time.

This information is being sent to all the associations of glass manufacturers and all the unions whose membership are in the glass industry.

Very truly yours,

BAIRD SNYDER,
Acting Administrator.

In Reply Refer To:
LE: WTN: EG

ROBERT W. MAXWELL, Esquire,
354 Stuart Building, Seattle, Washington.

DEAR MR. MAXWELL: This letter is in reference to the questions which you raised regarding the effect of the overtime provisions of the Fair Labor Standards Act on so-called "make ready" time practices of employment in the West Coast Lumber Industry.

Under date of February 13, 1941, we addressed a memorandum on this subject to Miss Dorothy Williams, Regional Attorney for the Wage and Hour Division at San Francisco, California. The opinion expressed in this memorandum confirms

the opinion given you when you conferred with representatives of this office in Washington. It is to the effect that where overtime work within the terms of the act results from the "make ready" time practices of the industry extra compensation for such overtime will be due in order that compliance with the overtime provisions of the act may be effected. * * *

Very truly yours,

For the Solicitor,
By RUFUS G. POOLE,
Assistant Solicitor,
In Charge of Opinions and Review.

U. S. GOVERNMENT PRINTING OFFICE: 1948

SUPREME COURT OF THE UNITED STATES.

No. 342.—October Term, 1945.

Steve Anderson, et al., Petitioners, *vs.* Mt. Clemens Pottery Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[June 10, 1946.]

Mr. Justice Murphy delivered the opinion of the Court.

Several important issues are raised by this case concerning the proper determination of working time for purposes of the Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U. S. C. § 201 *et seq.*

The Mt. Clemens Pottery Company, the respondent, employs approximately 1200 persons at its pottery plant at Mt. Clemens, Michigan; about 95% of them are compensated upon a piece work basis. The plant covers more than eight acres of ground and is about a quarter of a mile in length. The employees' entrance is at the northeast corner. Immediately adjacent to that entrance are cloak and rest rooms where employees may change to their working clothes and place their street clothes in lockers. Different shifts begin at different times during the day, with whistles frequently indicating the starting time for productive work. The whistles which blow at 6:55 and 7:00 a.m., however, are the most commonly used. An interval of 14 minutes prior to the scheduled starting time for each shift permits the employees to punch time clocks, walk to their respective places of work and prepare for the start of productive work. Approximately 200 employees use each time clock during each 14-minute period and an average of 25 employees can punch the clock per minute. Thus a minimum of 8 minutes is necessary for the employees to get by the time clock. The employees then walk to their working places along clean, painted floors of the brightly illuminated and well ventilated building. They are free to take whatever course through the plant they desire and may stop off at any portion of the journey to converse with other employees and to do whatever else they may desire. The minimum distances between time clocks and working places, however, vary from 130 feet to 890 feet, the esti-

mated walking time ranging from 30 seconds to 3 minutes. Some of the estimates as to walking time, however, go as high as 6 to 8 minutes. Upon arriving at their places of work, the employees perform various preliminary duties, such as putting on aprons and overalls, removing shirts, taping or greasing their arms, putting on finger cots, preparing the equipment for productive work, turning on switches for lights and machinery, opening windows and assembling and sharpening tools. Such activities, it is claimed, consume 3 or 4 minutes at the most. The employees are also allowed a 14-minute period at the completion of the established working periods to leave the plant and punch out at the time clocks.

Working time is calculated by respondent on the basis of the time cards punched by the clocks. Compensable working time extends from the succeeding even quarter hour after employees punch in to the quarter hour immediately preceding the time when they punch out. Thus an employee who punches in at 6:46 a.m., punches out at 12:14 p.m., punches in again at 12:46 p.m. and finally punches out at 4:14 p.m. is credited with having worked the 8 hours between 7 a.m. and 12 noon and between 1 p.m. and 4 p.m.—a total of 56 minutes less than the time recorded by the time clocks.

Seven employees and their local union, on behalf of themselves and others similarly situated, brought this suit under § 16(b) of the Fair Labor Standards Act, alleging that the foregoing method of computation did not accurately reflect all the time actually worked and that they were thereby deprived of the proper overtime compensation guaranteed them by § 7(a) of the Act. They claimed *inter alia* that all employees worked approximately 56 minutes more per day than credited by respondent and that, in any event, all the time between the hours punched on the time cards constituted compensable working time.

The District Court referred the case to a special master. After hearing testimony and making findings, the master recommended that the case be dismissed since the complaining employees "have not established by a fair preponderance of evidence" a violation of the Act by respondent. He found that the employees were not required to, and did not, work approximately 56 minutes more per day than credited to them. He further found that the employees "have not sustained their burden to prove that all the time between the punched entries on the clock was spent in work-

ing and that conversely none of the time in advance of the starting time spent by employees arriving early was their own time." Production work, he concluded, "did not regularly commence until the established starting time; and, if in some instances it was commenced shortly prior thereto, it was counterbalanced by occasions when it was started after the hour and by admitted occasions when it was stopped several minutes before quitting time."

As to the time between the punching of the clocks and the start of the productive work, the master made the following determinations:

(1) The time spent in walking from the time clocks to the places of work was not compensable working time in view of the established custom in the industry and in respondent's plant to that effect.

(2) The time consumed in preliminary duties after arriving at the places of work was not compensable here since the employees had produced no reliable evidence from which the amount of such work could be determined with reasonable definiteness.

(3) The time spent in waiting before and after the shift periods was not compensable since the employees failed to prove that if they came in early enough to have waiting time they were required to do so or were not free to spend such time on their own behalf.

The District Court agreed "in the main" with the master's findings and conclusions with one exception. It felt that the evidence demonstrated that practically all of the employees had punched in, walked to their places of work and were ready for productive work at from 5 to 7 minutes before the scheduled starting time, "and it does not seem probable that with compensation set by piece work, and the crew ready, that these employees didn't start to work immediately." The court accordingly established a formula, applicable to all employees, for computing this additional time spent in productive work. Under the formula, 5 minutes were allowed for punching the clock and 2 minutes for walking from the clock to the place of work—a total of 7 minutes which were not to be considered as working time. All minutes over those 7 as shown by the time cards in the morning and all over 5 at the beginning of the afternoon were to be computed as part of the hours worked. The court found no evidence of pro-

ductive work after the scheduled quitting time at noon or night. In other words, working time under this formula extended from the time punched in the morning, less 7 minutes, to the scheduled quitting time at noon and from the time punched at the beginning of the afternoon, less 5 minutes, to the scheduled quitting time for the day. No reason was given for the 2-minute differential between the morning and afternoon punch-ins. The use of this formula led the District Court to enter a judgment against respondent in the amount of $2,415.74 plus costs. 60 F. Supp. 146.

Only the respondent appealed. The Sixth Circuit Court of Appeals made a careful examination of the master's findings and conclusions, holding that they were all supported by substantial evidence and were not clearly erroneous. It stated that the District Court erred in failing to accept the finding of the master that productive work did not actually start until the scheduled time and that the formula devised for computing additional productive work was unsustainable because based upon surmise and conjecture. The Circuit Court of Appeals further held that the burden rested upon the employees to prove by a preponderance of the evidence that they did not receive the wages to which they were entitled under the Act and to show by evidence rather than conjecture the extent of overtime worked, it being insufficient for them merely to offer an estimated average of overtime worked. The cause of action accordingly was ordered to be dismissed. 149 F. 2d 461.

But we believe that the Circuit Court of Appeals, as well as the master, imposed upon the employees an improper standard of proof, a standard that has the practical effect of impairing many of the benefits of the Fair Labor Standards Act. An employee who brings suit under § 16(b) of the Act for unpaid minimum wages or unpaid overtime compensation, together with liquidated damages, has the burden of proving that he performed work for which he was not properly compensated. The remedial nature of this statute and the great public policy which it embodies, however, militate against making that burden an impossible hurdle for the employee. Due regard must be given to the fact that it is the employer who has the duty under § 11(c) of the Act to keep proper records of wages, hours and other conditions and practices of employment and who is in position to know and to produce the most probative facts concerning the nature and

amount of work performed. Employees seldom keep such records themselves; even if they do, the records may be and frequently are untrustworthy. It is in this setting that a proper and fair standard must be erected for the employee to meet in carrying out his burden of proof.

When the employer has kept proper and accurate records the employee may easily discharge his burden by securing the production of those records. But where the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes a more difficult problem arises. The solution, however, is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying due compensation as contemplated by the Fair Labor Standards Act. In such a situation we hold that an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate. See Note, 43 Col. L. Rev. 355.

The employer cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with the requirements of § 11(c) of the Act. And even where the lack of accurate records grows out of a bona fide mistake as to whether certain activities or non-activities constitute work, the employer, having received the benefits of such work, cannot object to the payment for the work on the most accurate basis possible under the circumstances. Nor is such a result to be condemned by the rule that precludes the recovery of uncertain and speculative damages. That rule applies only to situations where the fact of damage is itself un-

certain. But here we are assuming that the employee has proved that he has performed work and has not been paid in accordance with the statute. The damage is therefore certain. The uncertainty lies only in the amount of damages arising from the statutory violation by the employer. In such a case "it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts." *Story Parchment Co.* v. *Paterson Co.*, 282 U. S. 555, 563. It is enough under these circumstances if there is a basis for a reasonable inference as to the extent of the damages. *Eastman Kodak Co.* v. *Southern Photo Co.*, 273 U. S. 359, 377-379; *Palmer* v. *Connecticut Ry. Co.*, 311 U. S. 544, 560-561; *Bigelow* v. *RKO Radio Pictures, Inc.*, 327 U. S. —, — (slip opinion, pp. 9-11).

We therefore turn to the facts of this case to determine what the petitioning employees have proved and are entitled to in light of the foregoing considerations:

(1) On the issue as to the extent of the actual productive work performed, we are constrained to agree with the special master that it began and ended at the scheduled hours. This was purely a factual issue. The master made his findings in this respect through the weighing of conflicting evidence, the judging of the reliability of witnesses and the consideration of the general conduct of the parties to the suit. The master thereby concluded that productive work did not begin before the scheduled hours except in a few instances which were counterbalanced by occasions when work began after the scheduled hours or ended before the scheduled cessation of productive work. Our examination of the record leads us to acquiesce in these findings since they are supported by substantial evidence and are not clearly erroneous. And the court below correctly held that the District Court erred in failing to accept these findings and in creating a formula of compensation based upon a contrary view. Rule 53(e)(2) of the Federal Rules of Civil Procedure. See *Tilghman* v. *Proctor*, 125 U. S. 136, 149-150; *Davis* v. *Schwartz*, 155 U. S. 631, 636-637.

(2) The employees did not prove that they were engaged in work from the moment when they punched in at the time clocks to the moment when they punched out. They were required to be ready for work at their benches at the scheduled starting times. They were given 14-minute periods in which to punch the time

clocks, walk to the places of work and prepare for productive labors. But there was no requirement that an employee check in or be on the premises at any particular time during that 14-minute interval. As noted by the District Court, there was no evidence "that if the employee didn't get there by 14 minutes to seven he was fired and there is much testimony to prove that stragglers came in as late as one minute to seven.". 60 F. Supp. at 149. Indeed, it would have been impossible for all members of a particular shift to be checked in at the same time in view of the rate at which the time clocks were punched. The first person in line at the clock would be checked in at least 8 minutes before the last person. It would be manifestly unfair to credit the first person with 8 minutes more working time than credited to the last person due to the fortuitous circumstance of his position in line.

Moreover, it is generally recognized that time clocks do not necessarily record the actual time worked by employees. Where the employee is required to be on the premises or on duty at a different time or where the payroll records or other facts indicate that work starts at an earlier or later period the time clock records are not controlling. Only when they accurately reflect the period worked can they be used an as appropriate measurement of the hours worked. In this case, however, the evidence fails to indicate that the time clock records did so mirror the working time. They did not show the time during which the employees were compelled to be on the premises or at any prescribed place of work. They thus could not form the sole basis of determining the statutory workweek. See Interpretative Bulleton No. 13, paragraphs 2 and 3, issued by the Administrator of the Wage and Hour Division, U. S. Department of Labor; Wage and Hour Manual, Cumulative Edition, 1944-1945, p. 234.

(3) The employees did prove, however, that it was necessary for them to be on the premises for some time prior and subsequent to the scheduled working hours. The employer required them to punch in, walk to their work benches and perform preliminary duties during the 14-minute periods preceding productive work; the same activities in reverse occurred in the 14-minute periods subsequent to the completion of productive work. Since the statutory workweek includes all time during which an employee is necessarily required to be on the employer's premises,

on duty or at a prescribed workplace, the time spent in these activities must be accorded appropriate compensation.

No claim is here made, though, as to the time spent in waiting to punch the time clocks and we need not explore that aspect of the situation. See *Cameron* v. *Bendix Aviation Corp.*, — F. Supp. — (6 WH Cases 24.) But the time necessarily spent by the employees in walking to work on the employer's premises, following the punching of the time clocks, was working time within the scope of § 7(a). *Ballard* v. *Consolidated Steel Corp.*, 61 F. Supp. 996; *Ulle* v. *Diamond Alkali Co.*, 8 WHR 1042. Such time was under the complete control of the employer, being dependent solely upon the physical arrangements which the employer made in the factory. Those arrangements in this case compelled the employees to spend an estimated 2 to 12 minutes daily, if not more, in walking on the premises. Without such walking on the part of the employees, the productive aims of the employer could not have been achieved. The employees' convenience and necessity, moreover, bore no relation whatever to this walking time; they walked on the employer's premises only because they were compelled to do so by the necessities of the employer's business. In that respect the walking time differed vitally from the time spent in traveling from workers' homes to the factory. *Dollar* v. *Caddo River Lumber Co.*, 43 F. Supp. 822; *Walling* v. *Peavy-Wilson Lumber Co.*, 49 F. Supp. 846. Cf. *Commissioner* v. *Flowers*, 326 U. S. —. It follows that the time spent in walking to work on the employer's premises, after the time clocks were punched, involved "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business" *Tennessee Coal Co.* v. *Muscoda Local*, 321 U. S. 590, 598; *Jewell Ridge Co.* v. *Local No. 6167*, 325 U. S. 161, 164-166. Work of that character must be included in the statutory workweek and compensated accordingly, regardless of contrary custom or contract.

But under the conditions prevalent in respondent's plant, compensable working time was limited to the minimum time necessarily spent in walking at an ordinary rate along the most direct route from time clock to work bench. Many employees took roundabout journeys and stopped off en route for purely personal reasons. It would be unfair and impractical to compensate

them for doing that which they were not required to do. Especially is this so in view of the fact that precise calculation of the minimum walking time is easily obtainable in the ordinary situation.

We do not, of course, preclude the application of a *de minimis* rule where the minimum walking time is such as to be negligible. The workweek contemplated by § 7(a) must be computed in light of the realities of the industrial world. When the matter in issue concerns only a few seconds or minutes of work beyond the scheduled working hours, such trifles may be disregarded. Split-second absurdities are not justified by the actualities of working conditions or by the policy of the Fair Labor Standards Act. It is only when an employee is required to give up a substantial measure of his time and effort that compensable working time is involved. The *de minimis* rule can doubtless be applied to much of the walking time involved in this case, but the precise scope of that application can be determined only after the trier of facts makes more definite findings as to the amount of walking time in issue.

(4) The employees proved, in addition, that they pursued certain preliminary activities after arriving at their places of work, such as putting on aprons and overalls, removing shirts, taping or greasing arms, putting on finger cots, preparing the equipment for productive work, turning on switches for lights and machinery, opening windows and assembling and sharpening tools. These activities are clearly work falling within the definition enunciated and applied in the *Tennessee Coal* and *Jewell Ridge* cases. They involve exertion of a physical nature, controlled or required by the employer and pursued necessarily and primarily for the employer's benefit. They are performed solely on the employer's premises and are a necessary prerequisite to productive work. There is nothing in such activities that partakes only of the personal convenience or needs of the employees. Hence they constitute work that must be accorded appropriate compensation under the statute. See *Walling* v. *Frank*, 62 F. Supp. 261; *Philpott* v. *Standard Oil Co.*, 53 F. Supp. 833. Here again, however, it is appropriate to apply a *de minimis* doctrine so that insubstantial and insignificant periods of time spent in preliminary activities need not be included in the statutory workweek.

The master did not deny that such activities must be included within the employees' compensable workweek or that the evidence demonstrated that the employees did in fact engage in such activities. He denied recovery solely because the amount of time taken up by the activities and the proportion of it spent in advance of the established starting time had not been proved by the employees with any degree of reliability or accuracy. But, as previously noted, the employees cannot be barred from their statutory rights on such a basis. Unless the employer can provide accurate estimates, it is the duty of the trier of facts to draw whatever reasonable inferences can be drawn from the employees' evidence as to the amount of time spent in these activities in excess of the productive working time.

(5) As to waiting time before and after the shift periods, the special master found that the employees had not proved that they were in fact forced to wait or that they were not free to spend such time on their own behalf. This was also a question of fact and the presence of substantial evidence to support the master's finding precludes any different result.

Thus we remand the case for the determination of the amount of walking time involved and the amount of preliminary activities performed, giving due consideration to the *de minimis* doctrine and calculating the resulting damages under the Act. We have considered the other points raised by the petitioners but find no errors.

Reversed and remanded.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 342.—October Term, 1945.

Steve Anderson, et al., Petitioners, *vs.* Mt. Clemens Pottery Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[June 10, 1946.]

Mr. Justice Burton dissenting, with whom Mr. Justice Frankfurter concurs.

The opinion of the Court in this case has gone far toward affirming the Circuit Court of Appeals. I believe it should go the rest of the way.

This Court has agreed largely with the Court of Appeals in holding that the District Court was in error in not accepting the master's findings of fact in the face of Rule 53(e)(2) of the Federal Rules of Civil Procedure which requires that: "In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous." 28 U. S. C. following § 723(c).

This Court, accordingly, agrees that the trial court must accept as findings of fact in this case that the productive work performed by the employees began and ended at the regularly scheduled hours of work, on the even quarter-hours; that the time clocks were not controlling in establishing the exact minute of starting or stopping work; that the time spent in punching time clocks did not constitute compensable work; and that the "waiting time," if any, before and after the shift periods was not compensable time.

This Court also agrees that the District Court was in error in creating a formula of compensation not in accordance with the findings of the master.

The only questions remaining are whether the moments spent in walking from the time clocks to the employees' respective places of productive work within the plant and the minutes sometimes spent by some of the employees in miscellaneous "preliminary activities" before the scheduled starting times must be added,

as a matter of law "regardless of contrary custom or contract," to the compensatory time of "the statutory week," and, if so, how such additional time can be proved to have been so used in order to make it the basis for additional compensation.

The master determined that the time spent in walking from the time clocks to the places of work was not compensable working time in view of the established custom in the industry and in the plant. Moreover, the employees were free to take whatever course through the plant they desired and to stop off at any point to talk with other employees or to do whatever else they liked. Some workers came to the time clocks as late as one minute before the time to reach their place of productive work. The so-called "preliminary activities" are identified in this case as those of "putting on aprons and overalls, removing shirts, taping or greasing arms, putting on finger cots, preparing the equipment for productive work, turning on switches for lights and machinery, opening windows and assembling and sharpening tools." The master found that the employees had not offered proof of the time used for these purposes with a sufficient degree of reliability or accuracy for it to become the basis for recovery of overtime compensation. The employer would have still greater difficulty in keeping an accurate record of the time spent by each employee in such activities. These activities are of such a nature that the knowledge of them and the time spent in doing them rests particularly with the employees themselves. Such activities are of quite a different character from those made the basis of compensable time in the coal mine portal-to-portal cases. *Tennessee Coal Co.* v. *Muscoda Local*, 321 U. S. 590; *Jewell Ridge Corp.* v. *Local*, 325 U. S. 161.

Some idea of the shortness of the time and the smallness of the compensation involved in the "preliminary activities," in comparison with the cumbersomeness of any system for accurately recording the time spent in doing them, is apparent from the formula to which the District Court resorted in attempting to reach its solution of the difficulty. Under that formula, for example, the District Court found no basis for compensation for such activities after the scheduled quitting time. Compensable time spent in such activities was limited to a short period before the scheduled hours of beginning productive work in the morning and again on resuming work after lunch. Employees were allowed, or en-

couraged, to come to the plant 14 minutes ahead of the quarter hour at which their scheduled productive work began. The District Court estimated that on an average seven minutes should be allowed, each morning, for punching a time clock and walking from it to the employee's place of productive work. As to the "walking time" the court said, "the preparation even after punching the clock wouldn't take more than one or one and a half minutes and to the farthest point in the plant from the time clock wouldn't take more than 2 minutes." 60 F. Supp. 146, 149. If an employee came to the plant 14 minutes ahead of time, this left a maximum of seven minutes, plus "walking time," as the basis for a compensatory claim. The compensatory time in many cases would be much less. Similarly, under the District Court formula, employees returning to work after lunch were estimated to consume five minutes in punching the clock and walking to their places of productive work. This would leave a maximum of nine minutes, plus "walking time." At that hour of the day the workers already would be in their work clothes and there rarely would be more than a minute or two required for the preliminary activities for which compensation was claimed.

The amounts at issue, therefore, might not average as much as five to ten minutes a day a person and would not apply at all to many of the employees. None of this time would have been spent at productive work. The futility of requiring an employer to record these minutes and the unfairness of penalizing him, for failure to do a futile thing, by imposing arbitrary allowances for "overtime" and liquidated damages is apparent.

While conditions vary widely and there may be cases where time records of "preliminary activities" or "walking time" may be appropriate, yet here we have a case where the obvious, long established and simple way to compensate an employee for such activities is to recognize those activities in the rate of pay for the particular job. These items are appropriate for consideration in collective bargaining.

To sustain the position of the Court in requiring these additional moments to be recorded and computed as overtime, it is necessary to hold that Congress, in using the word "workweek," meant to give that word a statutory meaning different from its commonly understood reference to the working hours between "starting" and "quitting" time—or from "whistle to whistle."

There is no evidence that Congress meant to redefine this common term and to set aside long established contracts or customs which had absorbed in the rate of pay of the respective jobs recognition of whatever preliminary activities might be required of the worker by that particular job. For example, if the plant be one located at an inconvenient place, or if the workers have to change into working clothes at the plant, or have to grease or tape their arms before going to work, these are items peculiar to the job, and compensation for them easily can be made in the rate of pay per hour, per week or per piece, and all special stop-watch recording of them eliminated.

In interpreting "workweek" as applied to the industries of America, it is important to consider the term as applicable not merely to large and organized industries where activities may be formalized and easily measured on a split-second basis. The term must be applied equally to the hundreds of thousands of small businesses and small plants employing less than 200, and often less than 50 workers, where the recording of occasional minutes of preliminary activities and walking time would be highly impractical and the penalties of liquidated damages for a neglect to do so would be unreasonable. Such a universal requirement of recording would lead to innumerable unnecessary minor controversies between employers and employees. "Workweek" is a simple term used by Congress in accordance with the common understanding of it. For this Court to include in it items that have been customarily and generally absorbed in the rate of pay but excluded from measured working time is not justified in the absence of affirmative legislative action.

For these reasons, I believe that the judgment of the Court of Appeals should be affirmed.